(17,586.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 472.

FRANK X. WERLING AND EUGENE SMITH, PLAINTIFFS IN ERROR,

vs.

EMILY E. INGERSOLL AND GEORGE INGERSOLL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

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a UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the supreme court of the State of Illinois, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court, before you or some of you, between Frank X. Werling and Eugene Smith and Emily E. Ingersoll and George Ingersoll, a manifest error hath happened, to the great damage of the said Frank X. Werling and Eugene Smith, as by their complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court, at Washington, within thirty days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the twenty-second day of November, in the year of our Lord one thousand eight hundred and ninety-eight.

The Seal of the Circuit Court of the United States for the South'n Dist. Ill.

JAMES T. JONES,
Clerk of the Circuit Court of the United States for the Southern District of Illinois.

Allowed by—
JAMES H. CARTWRIGHT,
Chief Justice Supreme Court, State of Illinois.

b In the Supreme Court of Illinois.

FRANK X. WERLING and EUGENE SMITH *vs.* EMILY E. INGERSOLL and GEORGE INGERSOLL. } Appeal from La Salle.

I, Christoper Mamer, clerk of said supreme court, do hereby certify that on the twenty-ninth day of November, in the year of our Lord one thousand eight hundred and ninety-nine, a copy of the foregoing writ of error for the defendants was lodged in my office, at Springfield, Illinois.

Witness my hand and seal of said court this sixth day of December, A. D. 1899.

[Seal of the Supreme Court, State of Illinois, Aug. 23, 1818.]

CHRISTOPHER MAMER,
Clerk of Supreme Court.

[10-cent U. S. internal-revenue stamp, canceled 12, 6, '99. C. M.]

1—472

c UNITED STATES OF AMERICA, } ss:
The State of Illinois, }

Supreme Court.

To Emily E. Ingersoll and George Ingersoll, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Illinois, wherein Frank X. Werling and Eugene Smith are plaintiffs in error and you are defendants in error, to show cause, if any there be, why the decree rendered against the said plaintiffs in error, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable James H. Cartwright, chief justice of the supreme court of the State of Illinois, this 28th day of November, in the year of our Lord one thousand eight hundred and ninety-nine.

JAMES H. CARTWRIGHT,
Chief Justice of the Supreme Court of Illinois.

d STATE OF ILLINOIS, } ss:
La Salle County, }

I have duly served the within summons by reading the same and delivering a true copy thereof to each of the within-named Emily E. Ingersoll and George Ingersoll this 1st day of Dec., A. D. 1899.

MATTHEW COULSON, *Sheriff,*
By WM. COULSON, *Dep'ty.*

Fees.

Service	$1.50
8 mil-age	.40
Return	.10
Total	$2.00

Rec'd costs.

MATT. COULSON, *Sh'ff.*

e In the Supreme Court of Illinois.

FRANK X. WERLING and EUGENE SMITH
vs.
EMILY E. INGERSOLL and GEORGE INGERSOLL } Appeal from La Salle.

I, Christopher Mamer, clerk of said supreme court, do hereby certify that on the sixth day of December, in the year of our Lord one thousand eight hundred and ninety-nine, a copy of the foregoing citation and return was lodged in my office, at Springfield, Illinois.

Seal of the Supreme Court, State of Illinois, Aug. 23, 1818.

Witness my hand and the seal of said court this sixth day of December, A. D. 1899.

CHRISTOPHER MAMER,
Clerk of Supreme Court.

[10-cent U. S. internal-revenue stamp, canceled 12, 6, '99. C. M.]

f In the Supreme Court of Illinois.

FRANK X. WERLING and EUGENE SMITH
vs.
EMILY E. INGERSOLL and GEORGE INGERSOLL. } Appeal from La Salle.

I, Christopher Mamer, clerk of the supreme court of Illinois, elected for the northern grand division, and keeper of the records and files thereof, by virtue of the foregoing writ of error and in obedience thereto, do hereby certify that the following pages, numbered from one (1) to one hundred and thirty (130), inclusive, contain a true and complete transcript and copy of the record and proceedings had in said court in the case which is above entitled and of the whole thereof, including the opinion of the court, as the same remain of record and on file in my said office.

In testimony whereof I have hereunto set my hand and caused the seal of said supreme court to be hereunto affixed, at Springfield, this sixth day of December, in the year of our Lord one thousand eight hundred and ninety-nine.

Seal of the Supreme Court, State of Illinois, Aug. 23, 1818.

CHRISTOPHER MAMER,
Clerk of Supreme Court.

[Ten-cent U. S. internal-revenue stamp, canceled 12, 6, '99. C. M.]

1 At a supreme court begun and held at Springfield on Tuesday, the seventh day of February, in the year of our Lord one thousand eight hundred and ninety-nine, within and for the State of Illinois.

Present: Joseph N. Carter, chief justice; Alfred M. Craig, justice; Jacob W. Wilkin, justice; James H. Cartwright, justice; Benjamin D. Magruder, justice; Jesse J. Phillips, justice; Carroll C. Boggs, justice; Edward C. Akin, attorney general; Edward A. Baxter, sheriff.

Attest: CHRISTOPHER MAMER, *Clerk.*

Be it remembered that heretofore, to wit, on the fourth day of February, A. D. 1899, there was filed in the office of the clerk of said court a certain transcript of the record and proceedings of the circuit court of La Salle county; which said transcript is in the words and figures following, viz:

2 UNITED STATES OF AMERICA, } ss:
State of Illinois, La Salle County, }

Pleas, proceedings, judgments, and decrees before the Honorable Charles Blanchard, Harvey M. Trimble, and Samuel C. Stough, judges of the thirteenth judicial circuit of the State of Illinois, at a regular term of the La Salle county circuit court begun and held at the county court-house, in the city of Ottawa, in said county and State, on the second Monday (being the tenth day) of October, A. D. 1898, and of the Independence of the United States of America the one hundred and twenty-second.

Present: The Hon. Charles Blanchard, presiding judge; W. H. Stead, State's attorney; Matt. Coulson, sheriff; Henry Phillips, clerk.

Attest: HENRY PHILLIPS, *Clerk.*

Court opened by due proclamation according to law.

3 Be it remembered that on, to wit, the twenty-eighth day of December, A. D. 1898, there was filed in said court in said cause a certain præcipe in the words and figures following, to wit:

STATE OF ILLINOIS, } ss:
La Salle County, }

In the Circuit Court of La Salle County, January Term, A. D. 1898.

EMILY ELIZABETH INGERSOL and GEORGE Ingersol *vs.* FRANK X. WERLING and EUGENE SMITH.	Trespass. Damages, $1,000.00.

The clerk of said court will please issue summons, returnable as above directed, to the sheriff of La Salle county to execute, and oblige,

H. MAYO,
Attorney for Pl'ffs.

(Endorsed on back as follows:)

"11529. Circuit court. Emily Elizabeth Ingersol and George Ingersol *vs.* Frank X. Werling and Eugene Smith. Præcipe. Filed Dec. 28, 1897. Henry Phillips, clerk La Salle Co. circuit court."

4 Be it remembered that on, to wit, the twenty-eighth day of December, A. D. 1897, there was filed in said court in said cause a certain declaration in the words and figures following, to wit:

STATE OF ILLINOIS, } ss:
La Salle County, }

In the Circuit Court, to the January Term Thereof, A. D. 1897.

Emily Elizabeth Ingersol and George Ingersol, plaintiffs, by Henry Mayo, their attorney, complain of Frank X. Werling and

Eugene Smith, defendants, of a plea of trespass, for that the defendants, with force and arms, on, to wit, the 13th day of November, A. D. 1897, and on divers other days and times between that day and the commencement of this suit, broke and entered certain closes of the plaintiffs situate in the county of La Salle aforesaid, and then and there forced, broke open, broke to pieces, pulled down, and destroyed, to wit, one hundred and fifty rods of fence, composed of posts, wires, and board, and the boards, posts, wire, staples, hinges, gates, and other material of which said fences were constructed broke to pieces, damaged, and destroyed, to the value of one thousand dollars, and other wrongs to the plaintiffs then and there did, against the peace of the people of this State and to the damage of the plaintiffs of one thousand dollars, and therefore they bring their suit, &c.

HENRY MAYO,
Attorney for Plaintiffs.

5 (Endorsed on the back as follows:)
"11529. Circuit court. Emily Elizabeth Ingersol and George Ingersol *vs.* Frank X. Werling and Eugene Smith. Dec. in trespass. Filed Dec. 28, 1897. Henry Phillips, clerk La Salle Co. circuit court. H. Mayo, attorney for pl'ff-."

6 Be it remembered that on, to wit, the tenth day of January, A. D. 1898, there was filed in said court in said cause a certain appearance in the words and figures following, to wit:

STATE OF ILLINOIS, } ss:
La Salle County, }

Circuit Court Thereof, to the Jan. Term, A. D. 1898.

INGERSOLL
vs.
WERLING ET AL. } Action: Trespass.

We hereby enter our appearance for defendants in the above-entitled cause.

LINCOLN & STEAD,
Attorney- for Defendants.

Ottawa, Ill., Jan. 10, 1898.

(Endorsed on back as follows:)
"Gen. No., 11,529; term No., —. Appearance. January term, A. D. 1898. Ingersoll *vs.* Werling. Filed this 10 day of Jan'y, A. D. 1898. Henry Phillips, clerk. Lincoln & Stead, attorney- for defendants."

7 Be it remembered that on, to wit, the third day of December, A. D. 1898 (the same being one of the days of the regular October term of said court for the year 1898 aforesaid), the following, among other, proceedings were had and entered of record in said court in said cause:

EMILY ELIZABETH INGERSOL and George Ingersol *vs.* FRANK X. WERLING and EUGENE Smith.	11529.	Trespass. Damages, $1,000.00.

And now, on this day, come the plaintiffs herein, by Henry Mayo, their attorney, and the defendants by Lincoln & Stead, their attorneys, and, by agreement of parties, by their respective attorneys, a jury herein is waived, and this cause is submitted to the court for trial without a jury.

And thereupon said cause coming on for trial before the court upon the pleadings and proofs, and the court, having heard the evidence adduced and the arguments and suggestions of counsel thereon, takes said cause under advisement.

8 Be it remembered that on, to wit, the eighth day of December, A. D. 1898 (the same being one of the days of the regular October term of said court for the year 1898 aforesaid), the following, among other, proceedings were had and entered of record in said court in said cause:

EMILY ELIZABETH INGERSOL and GEORGE INGERSOL *vs.* FRANK X. WERLING and EUGENE SMITH. } 11529.

And now, on this day, again come the parties hereto, by their respective attorneys, as heretofore, and the court, having heretofore heard the evidence adduced and the arguments and suggestions of counsel, and being now fully advised in the premises, finds the issues herein joined for the plaintiff (to which finding the defendants except) and assesses plaintiffs' damages at the sum of fifty dollars.

Wherefore plaintiffs ought to have judgment upon the finding of the court. It is therefore considered and ordered by the court that the plaintiffs, Emily Elizabeth Ingersol and George Ingersol, do have and recover of and from the defendants, Frank X. Werling and Eugene Smith, the sum of fifty dollars damages so assessed against them by the finding of the court, together with their costs and charges in this behalf expended, and that they have execution therefor.

9 Be it remembered that on, to wit, the nineteenth day of December, A. D. 1898 (the same being one of the days of the regular October term of said court for the year 1898 aforesaid), the following, among other, proceedings were had and entered of record in said court in said cause:

EMILY ELIZABETH INGERSOL and GEORGE INGERSOL
vs.
FRANK X. WERLING and EUGENE SMITH. } 11529.

And now, on this day, come the defendants, by Lincoln & Stead, their attorneys, and move the court to vacate the judgment and findings herein and for a new trial.

10 Be it remembered that on, to wit, the thirtieth day of December, A. D. 1898 (the same being one of the days of the regular October term of said court for the year 1898 aforesaid), the following, among other, proceedings were had and entered of record in said court in said cause:

EMILY ELIZABETH INGERSOL and GEORGE INGERSOL
vs.
FRANK X. WERLING and EUGENE SMITH. } 11529.

And now, on this day, come the parties, by their respective attorneys, as heretofore, and, the defendants' motion to vacate the judgment and finding and for a new trial coming on to be heard, the court, after hearing the arguments and suggestions of counsel and being advised in the premises, overruled and denied the same (to which ruling and decision of the court the defendants, by their attorney, except).

Thereupon the defendants pray an appeal to the supreme court of the State of Illinois, which is allowed upon the defendants filing bond in the penal sum of two hundred dollars within thirty days, conditioned according to law, with security to be approved by the clerk of this court; and thirty days *is* allowed to prepare and tender a bill of exceptions.

11 Know all men by these presents that we, Frank X. Werling and Eugene Smith and Charles J. Metzger, of the county of La Salle and State of Illinois, are held and firmly bound unto Emily E. Ingersoll and George Ingersoll in the penal sum of two hundred dollars; for the payment of which, well and truly to be made, we and each of us bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated at Ottawa, Illinois, this 31st day of December, in the year of our Lord one thousand eight hundred and ninety-eight.

The condition of the above obligation is such that whereas the said Emily E. Ingersol and George Ingersol did on the 8th day of December, one thousand eight hundred and ninety-eight, at a term of the circuit court then being holden within and for the county of La Salle and State of Illinois, obtain a judgment against the above-bounden Frank X. Werling and Eugene Smith for the sum of fifty dollars and costs of suit, from which judgment the said Frank X. Werling and Eugene Smith have prayed for and obtained an appeal to the supreme court of said State:

Now, if the said Frank X. Werling and Eugene Smith shall duly

prosecute said appeal and shall, moreover, pay the amount of the said judgment, costs, interest, and damages rendered and to be rendered against them — the said supreme court in case the said judgment shall be affirmed in the said supreme court, then
12 the above obligation to be null and void; otherwise to remain in full force and virtue.

F. X. WERLING. [L. S.]
E. C. SMITH. [L. S.]
CHARLES J. METZGER. [L. S.]

Filed and approved this 4th day of Jan'y, A. D. 1899.

HENRY PHILLIPS, *Clerk.*

13 Be it remembered that on, to wit, the fourth day of January, A. D. 1899, there was filed in said court in said cause a certain bill of exceptions in the words and figures following, to wit:

Bill of Exceptions.

STATE OF ILLINOIS, } ss:
La Salle County, }

Circuit Court of said County, October Term, A. D. 1898.

EMILY ELIZABETH INGERSOL and George Ingersol *vs.* FRANK X. WERLING and EUGENE Smith.	11529.	Trespass. Damages, $1,000.00.

And now, on this day, comes the plaintiffs, by Henry Mayo, their attorney, and the defendants, by Lincoln & Stead, their attorneys, and by agreement of parties, by their said attornys, a jury herein is waived; and this cause is submitted to the court for trial without a jury, and thereupon said cause coming on for trial before the Honorable Charles Blanchard, judge of said court, the parties, in order to maintain the issues upon their respective parts, offered or introduced the following evidence:

14 The plaintiffs, by their attorney. offered and read in evidence a certain stipulation entered into between the parties to said cause, by their respective attorneys, and filed in said cause on the twenty-eighth day of September, in the year A. D. 1898, in the words and figures following, to wit:

STATE OF ILLINOIS, } ss:
La Salle County, }

In the Circuit Court.

EMILY ELIZABETH INGERSOLL and GEORGE INGERSOLL
vs.
FRANK X. WERLING and EUGENE SMITH. } Trespass.

Stipulation.

It is hereby stipulated and agreed by and between the parties to the above-entitled cause that said cause shall be tried by the Honorable Charles Blanchard, one of the judges of said court, without the intervention of a jury, the trial by jury being hereby waived.

It is further agreed that all questions of pleading are waived, and that any and all evidence competent to establish a cause of action or a defense shall be treated in the same manner and shall be given
15 the same force and effect as though all proper pleas had been filed and properly pleaded.

It is further stipulated and agreed that said trial shall be had upon the following agreed statement of facts, together with such further evidence as either party may introduce upon the trial:

I.

Section ten (10), township thirty-three (33) north, range three (3) east, of the third principal meridian, in La Salle county, Illinois, was one of the sections of land reserved to the United States under the act of Congress of March 2, 1827, entitled "An act to grant a quantity of land to the State of Illinois for the purpose of aiding in opening a canal to connect the waters of the Illinois river with those of Lake Michigan."

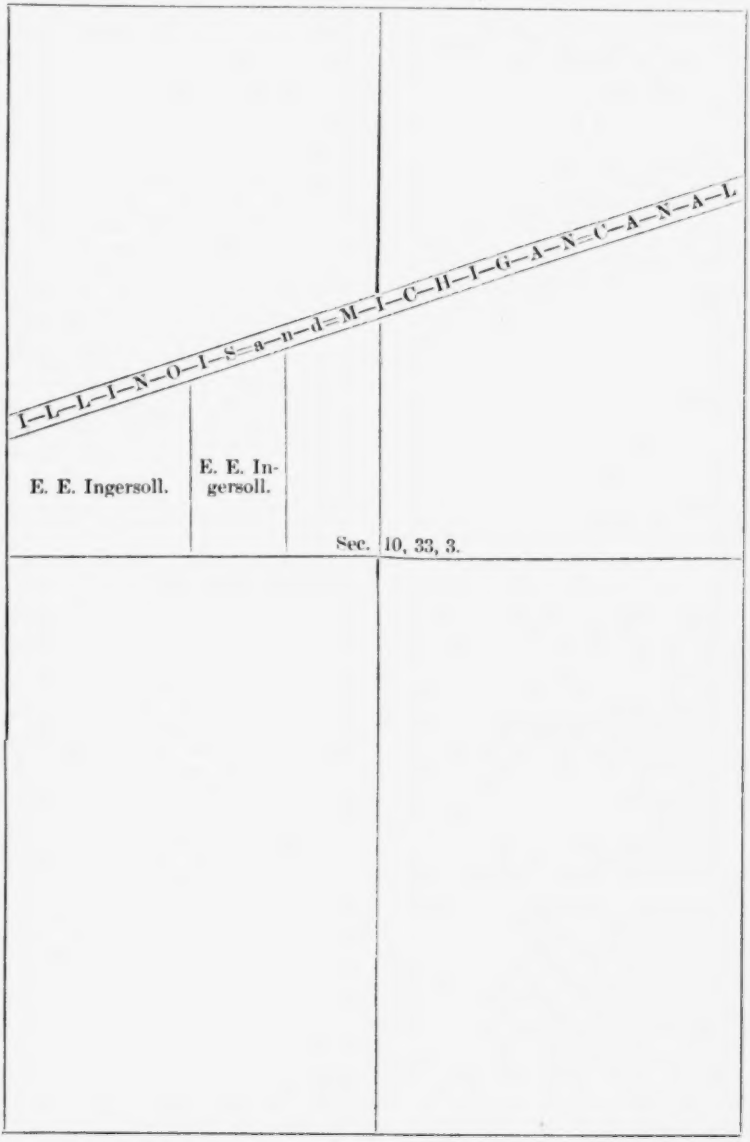
II.

The Illinois and Michigan canal, which connects the Illinois river with Lake Michigan, as located and constructed under the acts of Congress of the United States, extends in a northeasterly and southwesterly direction through said section ten.

The plaintiff Emily E. Ingersoll is the owner in fee-simple of that part of the west half ($\frac{1}{2}$) of the northwest quarter ($\frac{1}{4}$), and that part of the west half ($\frac{1}{2}$) of the southeast quarter ($\frac{1}{4}$) of the northwest quarter ($\frac{1}{4}$) of said section ten (10) which lie south of the right of way of said Illinois and Michigan canal.

16 The location of the plaintiff's said tracts of land with reference to the said Illinois and Michigan canal is correctly represented by the following plat, marked for reference "Plat A:

Plat A.


I—L—L—I—N—O—I—S=a—u—d=M—I—C—H—I—G—A—N=C—A—N—A—L
E. E. Ingersoll.
E. E. Ingersoll.
Sec. 10, 33, 3.

17 III.

The east half (½) of the northwest quarter (¼) of section ten (10) was entered by J. M. and W. M. Warnock on June 26, 1835, and through proper mesne conveyances was conveyed to John V. A. Hoes on December 27, 1841.

On June 1, 1867, John V. A. Hoes and Fanny R. Hoes, his wife, by their warranty deed of that date, conveyed to the plaintiff, Emily E. Ingersoll, all of the west half (½) of the east half (½) of the northwest quarter (¼) of said section ten (10) lying south of the Illinois and Michigan canal.

The west half of the northwest quarter (*1–2*) of said section ten (10) was entered by Henry L. Brush on July 1, 1835, and through proper mesne conveyances was conveyed to Henry F. Eames on August 9, 1858.

On May 25, 1859, Henry F. Eames and Emily S. Eames, his wife, by their quitclaim deed of that date, conveyed to Burton C. Cook the west half (½) of the northwest quarter (¼) of said section ten (10) excepting that part used by canal.

18 On February 8, 1862, Burton C. Cook and Elizabeth H. Cook, his wife, by their quitclaim deed of that date conveyed to Philo H. Lindley all that part of the west half (½) of the northwest quarter (¼) of said section ten (10) lying south of the Illinois and Michigan canal.

Through proper mesne conveyances from the said Philo H. Lindley, all that part of the west half (½) of the northwest quarter (¼) of said section ten (10) lying south of the Illinois and Michigan canal was conveyed to George H. Norris on August 4, 1869.

On June 7, 1870, George H. Norris, by warranty deed of that date, conveyed to the plaintiff Emily E. Ingersoll all that part of the west half (½) of the northwest quarter (¼) of section ten (10) lying south of the Illinois and Michigan canal.

IV.

The plaintiff claims that the right of way of the Illinois and Michigan canal through said section ten (10) and the title and rights acquired by the State of Illinois to lands therein under the various acts of Congress are limited and confined to the land used and occupied as and for the canal basin, and to a strip of land seventeen feet in width along and contiguous to the south margin of said canal basin used and occupied as and for a towpath;

19 that the south margin of said towpath constitutes the northern boundary line of her said lands.

The defendants claim that the State of Illinois is the owner of a strip of land ninety feet in width, extending through said section ten (10) along and contiguous to the south side of said canal.

If it shall be determined that the State of Illinois is not the owner and is not entitled to the possession of a strip of land ninety feet in width, extending through said section ten (10) along the south side of said canal, then it is hereby stipulated and agreed that the de

fendants were guilty of trespass, as alleged in the plaintiffs' declaration, and that judgment may be entered accordingly.

If it shall be determined that the State of Illinois is the owner and is entitled to the possession of said ninety-foot strip of land, then it is hereby stipulated and agreed that the defendants were not guilty of trespass, as alleged in the plaintiffs' declaration, and that judgment may be entered accordingly—

It being the understanding and agreement of the parties hereto, and it is so expressly stipulated and agreed, that the sole question and issue for determination and decision in this case is and
20 shall be whether or not the State of Illinois, under and by virtue of the acts of Congress of March 30, 1822, and March 2, 1827, or either of them (which said acts of Congress are set out in this stipulation), became and is vested with the ownership and title of and to a strip of land ninety feet in width on the south side of the said Illinois and Michigan canal through said section ten (10) aforesaid.

V.

For more than twenty years prior to November 13, 1897, the plaintiff Emily E. Ingersoll was in the possession and occupancy of all that part of the west half ($\frac{1}{2}$) of the southeast quarter ($\frac{1}{4}$) of the northwest quarter ($\frac{1}{4}$), and all that part of the west half ($\frac{1}{2}$) of the northwest quarter ($\frac{1}{4}$) of said section ten (10) lying south of said towpath, and during said time the plaintiff maintained a fence along the south margin of said towpath, said fence being situated a distance of seventeen feet from the south margin of the basin of said Illinois and Michigan canal.

VI.

On November 13, 1897, the defendants took down the plaintiffs' fence and removed the same from said ninety-foot strip on the south side of said Illinois and Michigan canal in said section ten (10) aforesaid.

21 VII.

The defendants, Frank X. Werling and Eugene Smith, were the duly constituted agents of the State of Illinois, and in taking down and removing the plaintiffs' said fence the defendants were acting for and on behalf of the State of Illinois and under and by virtue of its authority and direction.

VIII.

The act of Congress authorizing the State of Illinois to open a canal through the public lands to connect the Illinois river with Lake Michigan was and is as follows:

"An act to authorize the State of Illinois to open a canal through the public lands to connect the Illinois river with Lake Michigan.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled:

SEC. 1. The State of Illinois be and is hereby authorized to survey and mark, through the public lands of the United States, the route of the canal connecting the Illinois river with the southern bend of Lake Michigan; and ninety feet of land on each side of said canal shall be forever reserved from any sale to be made by the United States, except in cases hereinafter provided for, and the use
22 thereof forever shall be and the same is hereby vested in the State for a canal, and for no other purpose whatever—on condition, however, that if the said State does not survey and direct by law said canal to be opened, and return a complete map thereof to the Treasury Department, within three years from and after the passing of this act, or if the said canal be not completed, suitable for navigation, within twelve years thereafter, or if said ground shall ever cease to be occupied by, and used for, a canal suitable for navigation, the reservation and grant hereby made shall be void and of none effect; provided always, and it is hereby enacted and declared, that nothing in this act contained, or that shall be done in pursuance thereof, shall be deemed or construed to imply any obligation on the part of the United States to appropriate any money to defray the expenses of surveying or opening said canal; provided also, and it is hereby further enacted and declared, that the said canal when completed, shall be, and forever remain, a public highway for the use of the Government of the United States, free from any toll or other charge whatever, for any property of the United States, or persons in their service, passing through the same.

SEC. 2. Every section of land through which said canal
23 route may pass, shall be and the same is hereby reserved from future sale, until hereafter specially directed by law; and said State is hereby authorized and permitted, without waste, to use any materials on the public lands adjacent to said canal, that may be necessary for its construction."

Approved March 30, 1822.

IX.

The General Assembly of the State of Illinois, on the 14th day of February, 1823, passed an act to provide for the survey and opening of a canal between the Illinois river and Lake Michigan, which act is as follows:

"An act to provide for the improvement of the internal navigation of this State.

SEC. 1. Be it enacted by the people of the State of Illinois, represented in the General Assembly That Emanuel J. West, Erastus Brown, Theophilus W. Smith, Thomas Sloo, Junior, and Samuel Alexander, be, and they are hereby, appointed a board of commis-

sioners, to consider, devise and adopt such measures as shall or may be requisite to effect the communication, by canal and locks, between the navigable waters of the Illinois river and Lake Michigan; and in the case of the death or resignation of any of the said commissioners, in the recess of the General Assembly, the governor, or the person administering the government of this State, shall appoint another commissioner or commissioners to supply such vacancy or vacancies; who shall continue in office until the end of the next session of the General Assembly.

SEC. 2. Be it further enacted, That the said commissioners shall choose one of their number to be president of said board, who shall have power to call a meeting of the same, whenever, in his opinion it shall be requisite and necessary, and the said board may adjourn from time to time, to meet at any time and place they may deem most conducive to the public good; and further, the said commissioners shall have power to employ an engineer, and such other persons as may be necessary to enable them to fulfil and discharge the duties imposed upon them by this act; and to allow and pay the said engineer and other persons, so by them employed, for their respective services, such sum or sums of money as may be adequate and reasonable.

SEC. 3. Be it further enacted, That it shall be the duty of the said commissioners, as soon as may be, after the passage of this act, to cause that part of the territory of this State, which may lie open or contiguous to the probable courses and ranges of the said canal, to be explored and examined for the purpose of fixing and determining the most proper and eligible route for the same, and to cause all necessary surveys and levels to be taken, and accurate maps, field books and drafts thereof to be made; and further to adopt and recommend proper plans for the construction and formation of the said canal, and of the locks, dams, and embankments, tunnels, culverts, and acqueducts, which may be necessary for the completion of the same; and to cause all necessary plans, drafts and models thereof, to be extended under their direction.

SEC. 4. Be it further enacted, That it shall be the duty of the said commissioners to make, or cause to be made, with as much accuracy and minuteness as may be, calculations and estimates of the sum or sums of money which may or will be necessary for completing the said canal according to the plan or plans which may be adopted and recommended by them for the construction and formation of the same; and to cause the said calculations, and estimates, and all surveys, maps, field books, plans, drafts, and models, authorized and directed by this act, or so many thereof as may be completed, together with a plain and comprehensive report of all their proceedings, under and by virtue of this act, to be presented to the General Assembly of the State, at the commencement of their next regular session, or at the commencement of an extra session of the present General Assembly, should the governor convene the same.

SEC. 5. Be it further enacted, That the said commissioners are

authorized and required *and required* to invite the attention
26 of the governors of the States of Ohio and Indiana, and, through them, the legislatures of their respective States, to the importance of improving and connecting the navigation of the Wabash and Maumee rivers, by canal communications, and to recommend the adoption of preparatory measures to effect that object; and that the said commissioners report, as required in the preceeding section of this act, all their correspondence and proceedings in relation to effecting the aforesaid communication.

SEC. 6. Be it further enacted, That it shall be the duty of the auditor of this State, whenever a majority of said commissioners shall require it, to issue his warrant on the treasurer, to pay to the order of a majority of the said commissioners, out of any money in the treasury not otherwise appropriated, any sum or sums of money, in the whole not exceeding six thousand dollars, and for which the said commissioners shall account to the auditor, on or before the tenth day of the next regular session of the General Assembly."

Approved, February 14, 1823.

X.

On January 13, 1825, an act of the General Assembly of the State of Illinois theretofore passed, entitled "An act making appropriations for the years 1825 and 1826," was duly amended by the said General Assembly by adding thereto the following sections:

"SEC. 6. That the sum of two thousand eleven dollars and
27 thirty-one cents ($2,011.31) be and is hereby appropriated to and for the actual expenditures made and liabilities incurred by the canal commissioners, to be paid to the order of a majority of the said commissioners at any time after the first day of January next.

SECTION 7. That Erastus Brown, one of the canal commissioners appointed by the last General Assembly to examine, survey, etc., the route for the canal between the waters of Lake Michigan and Illinois river, be paid the sum of three dollars and thirty-five cents per day for each day by him employed in that service; the number of days to be ascertained by his own oath indorsed on his account for services, to be filed with the auditor before obtaining his warrant."

XI.

On January 17, 1825, the General Assembly of the State of Illinois passed an act to incorporate the Illinois and Michigan Canal Company; which said act was and is in the words and figures following, to wit:

"An act to incorporate the Illinois and Michigan Canal Company.

Whereas, the improvement of the internal navigation of the State by connecting the waters of the Illinois river and Lake Michigan, will greatly promote the best interests of our citizens, and facilitate and expediate the development of the recourses, wealth and importance of the State; therefore,

28 SEC. 1. Be it enacted by the people of the State of Illinois, represented in the General Assembly, That Edward Coles, Shadrach Bond, Justus Post, Erastus Brown, William S. Hamilton, Joseph Duncan and John Warnock, and their associates who shall hereafter become subscribers to the capital stock, their heirs, successors, and assigns, shall be and are hereby created, made and constituted a corporation and body politic, by the name and style of the president, directors and company of 'The Illinois and Michigan Canal Association,' and by that name shall be and are hereby made able and capable, in law to have, purchase, and receive, possess, retain and enjoy, to them, and their heirs, successors, and assigns, any lands, tenements, hereditaments, goods, chattels and rents of whatever description, kind and nature, which by them may be considered requisite or convenient for the production and completion of the object of the association as hereinafter specified and declared, and the same to give, grant, bargain, sell, alien, convey, dispose of, and conform, to sue and be sued, plead and be impleaded, answer and be answered, and defend and be defended in all courts of law and equity in this State, to make, have and use a common seal, and the same to break, alter and renew at their pleasure; and also to ordain, establish and put in force and execution such ordinances, by-laws, and regulations for the government, of the corporation, as the president and directors thereof may, from time to time, deem necessary and convenient; and the same to annually
29 revise, and alter as the said president and directors for the time being or their successors in office, may deem expedient; provided, that such by-laws, ordinances and regulations, shall not be contrary to the laws and constitution of this State.

SEC. 2. Be it further enacted, That the capital stock of said association shall consist of one million dollars (exclusive of such real, personal and mixed estate as the said corporation may deem it expedient for the prosecution of the business of the said association to acquire), which said capital stock shall be divided into ten thousand shares of one thousand dollars each; provided, however, that, in case it should be by the said president and directors *be* deemed requisite and advisable, that said president and directors for the time being, may at their pleasure increase the said capital stock from time to time by augmenting the value of the respective shares thereof.

SEC. 3. Be it further enacted, That the president and directors, of said association, above named, shall at such time or times, and at such place or places as they may deem expedient and proper, cause books for subscriptions to be opened for the capital stock aforesaid, which subscriptions shall be paid at such time or times, and in such installments as the president and directors for the time being may, from time to time, prescribe and direct: and whenever a majority of the said capital stock shall have been subscribed, the
30 president and directors shall, as soon as practicable, call a meeting of the stockholders of said association, to be holden at such place as the said president and directors may conceive advisable, at which time and place the said stockholders either in

person or by proxy (each share being entitled to one vote) shall proceed to elect by ballot five of their members to serve as directors till the first Monday of January next thereafter ensuing, or till such time as an election of directors shall have been made. And that when the election of directors shall have been closed the directors elected shall proceed to elect by ballot one of their body to serve as president of said corporation till the next ensuing annual election which in each year thereafter shall be holden on the first Monday of January in each succeeding year; but provided the said election should not be holden on the respective days herein specified, the corporation shall not thereby be considered dissolved, but shall on some other day not far distant, proceed to hold such election.

SEC. 4. Be it further enacted, That, in a convenient time after ten per centum of the capital stock shall have been paid to the treasurer of said corporation it shall be the duty of the board to commence constructing a canal to connect the waters of the Illinois river and Lake Michigan, and proceed as rapidly to the completion of that object as may be deemed practicable, and expedient,
31 having in view the ultimate permanency of the work, and the facility and safety of the communications.

SEC. 5. Be it further enacted, That the canal contemplated by this act shall have the following dimensions, to wit, at least forty feet wide at the summit water line, twenty-eight feet wide at bottom, and of sufficient depth to contain water at least four feet deep; and be furnished with such locks, aqueducts, and dams as may be required as to ensure a safe and convenient navigation for boats of at least twenty-five feet long, thirteen feet six inches wide, drawing three feet of water; and that the rate of tolls to be established by said corporation shall not exceed for boats constructed particularly for the canal navigation, one-half cent per mile for each ton of the capacity of said boat; on flour, meal, all kinds of grain, beef, pork, tobacco, and all other articles the growth and produce of the State, on merchandise of domestic manufacture, six cents per mile per ton; and on all other articles not herein enumerated, a sum not exceeding eight cents per mile per ton. And for the purpose of collecting such rates or tolls, it shall and may be lawful for the collector or toll-gatherer of said company to stop and detain all boats or crafts intending to pass any such lock, until the rate or toll shall be paid; and, if any such boat or craft having passed any such lock, shall afterwards refuse to pay the toll or rates established as afore-
32 said the person having charge of such boat shall forfeit and pay to such company triple the amount of such toll or rates, to be recovered by action of debt or otherwise, before any justice of the peace; and the property of such boat or craft, and the loading of the same, shall be liable to execution on any judgment so recovered whether it belongs to the person so refusing or not.

SEC. 6. Be it further enacted, That, to enable the said corporation to advantageously effect the canal navigation, and objects contemplated by this act, they are hereby authorized and empowered to employ at their office and on their work, and in and about the business of said corporation, such engineers, subofficers, clerks,

laborers, servants and domestics, as they may from time to time require; and all persons employed in the service of said corporation shall at no time (the invasion of the country by an enemy alone excepted) be liable or subject to perform military or militia duty; and in all respects to manage their business and conduct their operations as in their opinion may be conducive to the interest and benefit of the corporation.

SEC. 7. Be it further enacted, That, all cessions, grants and transfers made, or that may hereafter be made by the Government of the United States, by an individual State, or by any person or persons, to this State, or to the said corporation, of any lands, stocks, tenements, or hereditaments for the purpose of promoting the
33 completion of the internal navigation contemplated by this act, shall pass to and be vested in the said corporation, together with all the right, title and interest, property, estate and demand, and also all the profit and emoluments thence arising, as fully and effectually as the State could, by virtue of the gifts, grants and cessions, as aforesaid, occupy, possess and enjoy the same: Provided, however, that the said company shall have begun and completed said canal, previous to the first day of January in the year of our Lord one thousand eight hundred and thirty-five.

SEC. 8. Be it further enacted, That at any time from and after the expiration of fifty years from and after the entire completion of said canal, this State shall have the right and privileges to become possessor of said canal, together with all the privileges and emoluments thence arising and also of all the grants, cessions and privileges given, granted and made and created by this act, to said corporation, by refunding to the president and directors thereof in lawful money of the United States of America, the absolute costs and charges by them incurred in and about said canal together with the interest computed on the whole, semi-annually, from the time of expenditure to the time of payment by said State, at the rate of six per centum per annum. Provided, always, that the said corporation shall and may, at all times, peac-ably and quietly
34 have and hold, occupy, possess and enjoy the said canal, together with all the privileges and emoluments thereunto belonging and therefrom arising until the State shall absolutely and after the expiration of the fifty years aforesaid, pay or cause to be paid as aforesaid to the said corporation, the costs and charges of said canal, together with interest on the same as aforesaid.

SEC. 9. Be it further enacted, That after the expiration of the said period of fifty years as aforesaid, whenever the said State shall pay or cause to be paid to the said corporation, with interest as aforesaid, the absolute costs and charges of said canal, then the said corporation shall be obliged to transfer, alien, release, and convey to the said State, all right, title, interest, estate, property, claims, and demand it has in and to said canal, together with all the privileges and appurtenances thereunto belonging; also all such parts of real estate as are hereby, or may hereafter be ceded by said State to said corporation, as may or shall at the time remain unsold or undisposed of by said corporation, and for such part or parts of real

estate, ceded as aforesaid by the State, as may have been sold or disposed of by the said corporation, the said corporation shall refund to the State the amount received therefor, together with interest on the whole from the time of payment, computed semi-annually at the rate of six per centum per annum. And the said
35 company shall at every session of the General Assembly, until the completion of the work, report a certified statement of the aggregate expense by them incurred on said canal."

XII.

On January 18, 1826, the senate and house of representatives of the State of Illinois adopted a memorial to the Congress of the United States, which said memorial was thereafter and during said month of January, 1826, transmitted to and received by the Congress of the United States; which said memorial was and is in the words and figures following to wit:

United States of America in Congress assembled:

The memorial of the General Assembly of the State of Illinois respectfully represents that the construction of a canal uniting the waters of Lake Michigan with the Illinois river will form an important addition to the great connecting links in the chain of internal navigation which will effectually secure the insoluble union of the confederate members of this great and powerful Republic. By the completion of this great and valuable work the connection between the North and the South, the East and the West, would be strengthened by the ties of commercial intercourse and social neighborhood, and the union of the States might bid defiance to internal commotion, sectional jealousy, and foreign invasion. All the
36 States of the Union would then feel the most powerful motives to resist every attempt at dissolution. To effect so great and desirable an object your memorialists believe to be of sufficient importance to engage the attention and awaken the munificent patronage of a government whose principle of action is the promotion of the general welfare. Your memorialists are sensibly alive to the spirit of improvement that manifests itself in almost every section of our extensive country and would fain lend a helping hand in so great and good a cause. Their situation, however, forbids their doing much without the aid of the Federal Government, into whose Treasury almost all the funds, whether brought hither by emigrants or earned by the industry of their citizens, are paid for the purchase of the public lands. While this state of things shall continue and the money thus paid into the Treasury of the Union is taken out of our State our people will not be able to engage in the glorious work of improving our common country. Ought the people of this State to stand by with folded arms and behold the great work of internal improvment progress in other States without making an effort to improve their own conditions and at the same time advance the interest of our beloved country? A condition thus paralized is

at war not only with our interests, but with the best feelings
37 of our hearts. Did this State possess the public domain lying within its bounds as in the case with the older members of this Confederacy your memorialists would not appear before your honorable body to solicit aid in this important work. If, as your memorialists believe, the construction of this canal would be highly beneficial to the Union at large, if the receipts into the treasury of the United States would be augmented by the increased sales of public lands, and if the interest of this State would be also advanced thereby, is it unreasonable to apply to a paternal government for assistance in the promotion of such beneficial ends? It is unnecessary for your memorialists to enlarge on the great advantages of this canal to the Union in the facilities to be afforded in the event of war either with the Indian tribe- inhabiting our frontier or the British nation. Your honorable body is aware that this State is situated on the borders of an Indian country filled with numerous and powerful tribes of the sons of the forest. If our country should be again engaged in war, the saving of expense in the transportation of munitions of war would alone defray the expense of the contemplated canal and justify the United States in making a liberal appropriation for its construction. Your memorialists do not, however, ask your honorable body to appropriate money out of the Treasury to aid them in this work. They only ask for a track of land
38 through which the contemplated canal may pass and which for a series of years will be wholly unproductive to the Government unless the canal shall be commenced under auspices favorable to its completion; in which event all the land in the vicinity would immediately become available to the United States. Your memorialists sincerely believe that a liberal appropriation of land for this object would, even in a pecuniary point of view, be of immense importance to the Treasury of the Union. The public lands in the vicinity would not only sell, but at a considerable advance upon the minimum price. Should this opinion be correct (and does not experience justify it?), the United States would be gainers by the proposed donation to the State. Your memorialists further state that at their last session they passed an act of incorporation, upon very liberal terms authorizing a company to construct the projected canal; but the remoteness of the country from the residence of capitalists has prevented them from engaging in the work. At their present session your memorialists have repealed the charter, and their only hope of soon beginning the work depends upon the liberality of your honorable body. Your memorialists have caused the route to be explored and estimates to be made of the probable expense of the work; from which it appears that the cost of constructing the canal will not be less than $600,000,
39 and may possibly amount to $700,000. To the end, therefore, that your memorialists may be enabled to commence and complete this great and useful work, we pray your honorable body to grant to this State the respective townships of land through which the contemplated canal may pass, the avails of which to be

appropriated exclusively to the construction of said canal upon such terms and conditions as to your honorable body may seem proper.

DAVID BLACKWELL,
Speaker of the House of Representatives.
RAPHAEL WIDEN,
Speaker of the Senate pro Tem.

40 XIII.

On January 20, 1826, the General Assembly of the State of Illinois passed an act repealing the act incorporating the Illinois and Michigan Canal Company; which act was and is in the words and figures following, to wit:

"An act to repeal An act to incorporate the Illinois and Michigan Canal Company, and for other purposes.

"Whereas, the persons named in the first section of an act entitled 'An act to incorporate the Illinois and Michigan Canal Company,' have not performed any act by which the right of the General Assembly to repeal their charter could be taken away; and whereas it is believed that the highly important object of the above-cited act can be promoted with greater advantage to the public, by having the contemplated canal constructed under the direction of the State; therefore,

SEC. 1. Be it enacted by the people of the State of Illinois, represented in the General Assembly, That the act entitled 'An act to incorporate the Illinois and Michigan Canal Company,' approved January 17, 1825, and the act entitled, 'An act to provide for the improvement of the internal navigation of this State,' approved Feb. 14, 1823, be and the same are hereby repealed.

41 SEC. 2. Be it further enacted, That it shall be the duty of the governor of this State to endeavor to ascertain the best terms on which loans can be obtained on behalf of the State, for the purpose of constructing a canal from Lake Michigan to the Illinois river, and to report the same to the General Assembly at their next session."

XIV.

On December 5, 1826, Edward Coles, governor of the State of Illinois, delivered to the General Assembly of the State of Illinois a message, a portion of which said message was and is in the words and figures following, viz:

"In the fulfillment of the duty imposed by the legislature, the executive has endeavored to ascertain the terms on which a loan could be procured by the State for the purpose of constructing a canal from Lake Michigan to the Illinois river; but, owing to the great fluctuation and depression of the money market and the uncertainty of the situation during the next year, capitalists were reluctant to commit themselves to any specific terms on which they would be willing to make a loan at so remote a period. From the best information, however, which has been received, it is confi-

dently believed that if Congress should make a liberal grant of land, there will be no difficulty on the part of the State in obtaining a loan at six per cent. per annum. Considering the
42 favorable manner in which our application for a grant of land was received by Congress at its last session, would it not be wise in the legislature to adopt at its present session preparatory measures to commence this great work of improvement, predicated on the liberal grant of land by Congress previous to the meeting of the next General Assembly?"

XV.

On March 2, 1827, the Congress of the United States passed an act to aid the State of Illinois in opening a canal connecting the waters of the Illinois river with Lake Michigan; which act was and is in the words and figures following, to wit:

"An act to grant a quantity of land to the State of Illinois for the purpose of aiding in opening a canal to connect the waters of the Illinois river with those of Lake Michigan.

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there be, and hereby is, granted to the State of Illinois, for the purpose of aiding the said State in opening a canal to unite the waters of the Illinois river with those of Lake Michigan, a quantity of land equal to one-half of five sections in width, on each side of said canal, and reserving each alternate section to the United
43 States, to be selected by the commissioner of the land office, under the directions of the President of the United States, from one end of the said canal to the other; and the said lands shall be subject to the disposal of the legislature of the said State, for the purpose aforesaid, and no other: Provided, that the said canal when completed, shall be and forever remain, a public highway for the use of the Government of the United States, free from any toll, or other charge, whatever, for any property of the United States, or persons in their service, passing through the same: Provided, that said canal shall be commenced within five years, and completed in twenty years, or the State shall be bound to pay to the United States the amount of any lands previously sold, and that the title to purchasers under the State shall be valid.

SEC. 2. And be it further enacted, That, so soon as the route of the said canal shall be located and agreed on by the said State, it shall be the duty of the governor thereof, or such other person or persons as may have been, or shall hereafter be, authorized to superintend the construction of said canal, to examine and ascertain the particular sections to which the said State shall be entitled, under the provisions of this act, and report the same to the Secre-
44 tary of the Treasury of the United States.

SEC. 3. And be it further enacted, That the said State, under the authority of the legislature thereof, after the selection shall have been so made, shall have power to sell and convey the whole,

or any part of said land, and to give a title in fee-simple therefor, to whomsoever shall purchase the whole, or any part thereof.

Approved March 2, 1827."

XVI.

On January 22, 1829, the General Assembly of the State of Illinois passed an act providing for the construction of the Illinois and Michigan canal; which said act is in the words and figures following, to wit:

"An act to provide for constructing the Illinois and Michigan canal.

SEC. 1. Be it enacted by the people of the State of Illinois, represented in the General Assembly, That the governor shall biennially nominate, and by and with the advice and consent of the senate, appoint three commissioners, whose duty it shall be to consider, devise and adopt, such measures as may be required to facilitate and effect the communications, by means of a canal and locks,
45 between the navigable waters of the Illinois river and Lake Michigan, and in case of the death, resignation, or refusal to act, during the recess of the legislature, of either of said commissioners, the vacancy thereby occasioned shall be filled by the governor.

SEC. 2. The said commissioners shall choose one of their number to be president of the board, and shall appoint some [illegible]ble person or persons to be their secretary and treasurer, who shall be allowed and paid quarter-yearly, such compensation, out of the canal fund, as the said commissioners shall deem reasonable and just. And the president of the board shall have power to call a meeting of the commissioners whenever, in his opinion, the public interest requires it; or a majority of the commissioners may request it. And the said board may adjourn, from time to time, to meet at any time and place they may deem most conducive to the public good. And the said commissioners shall have power to employ such agents, engineers, surveyors, draftsmen, and other persons, as in their opinion may be necessary, to enable them to fulfil and discharge the duties imposed upon them by this act; and to pay them such compensation for their services as they may think them justly entitled to; provided that if the Government of the United States furnishes an engineer, it shall be the duty of the said commissioners to
46 accept of his services, for the purposes contemplated by this act.

SEC. 3. It shall be the duty of the said canal commissioners before they enter upon the discharge of the duties imposed upon them by this act, to take an oath, well and faithfully to execute the duties of their office, and severally to enter bond to the people of the State of Illinois, to be approved by the governor, with at least two good and sufficient securities, in the penal sum of twenty thousand dollars, faithfully to account for all moneys that may come into their hands, by virtue of their office, and they shall respect-

ively receive, as a compensation for their services, three dollars per day, for each day they may necessarily — engaged in discharge of the duties imposed by this act, out of canal fund, and the treasurer shall pay the same.

SEC. 4. The treasurer, before entering upon the discharge of the duties of his office, shall take an oath, well and faithfully to execute the duties of treasurer, and shall enter into bond, with two or more good and sufficient securities, to the canal commissioners, to be approved by them, conditioned for the faithful discharge of all the duties imposed upon him by this act, or shall hereafter be imposed upon him by law, and to account faithfully for all sums of money and effects that may come to his hands as treasurer. And it shall be the duty of the canal commissioners, whenever the
47 money in the possession of the treasurer or to be received by him, shall exceed the sum in which he shall have given bond, to require him to give additional bond, with additional security, sufficient to cover the amount received, or to be received by said treasurer; and for a failure to give such bond, or for any culpable neglect of duty, said commissioners may remove him from office, and may appoint another in his place.

SEC. 5. It shall be the duty of the canal commissioners, as soon as practicable after the passage of this act; to cause those parts of the territory of this State which is upon, or contiguous to, the probable course or range of said canal, to be explored and examined for the purpose of fixing and determining the most proper and eligible route for the same; and to cause all necessary surveys and levels to be taken, and accurate maps, field books, and drafts to be made; and as soon thereafter as they may be able to command sufficient funds, and deem it expedient, shall commence the work by opening a canal, and constructing locks, aqueducts, and dams and embankments, to effect a navigable communication between Lake Michigan and the Illinois river.

SEC. 6. The canal commissioners shall select, or cause to be selected, as soon as practicable, in conjunction with such
48 commissioner as shall be appointed by the Commissioner of the General Land Office, under the direction of the President of the United States, the alternate sections of land granted to this State by the provisions of an act of Congress, entitled 'An act to grant a quantity of land to the State of Illinois, for the purpose of aiding her in opening a canal to connect the waters of the Illinois river with those of Lake Michigan,' approved 2nd of March, 1827. And if no commissioner shall be appointed on the part of the General Government, the said commissioners, or either of them, shall proceed to make such selections; and shall, without delay, forward to the governor a duplicate copy of the list containing the numbers of each section by him or them selected, who shall forward a copy of the same to the Commissioner of the General Land Office.

SEC. 7. As soon as said lands shall have been selected, and a duplicate list thereof furnished as aforesaid, it shall be the duty of said commissioners to give the necessary public notice, and proceed to sell the same, at any place, either in this State or elsewhere, as they

may think best, in half quarter sections, quarter or fractional sections. The sale shall be conducted in the same manner, and the land sold upon the same terms and conditions in all respects, as the lands of the United States are now sold. Any or either of said commissioners may superintend said sales, and the treasurer shall have the same power, and perform the same duties in the disposal of said lands, that are exercised by the receivers of public moneys of the United States. And it shall be the duty of the said superintending commissioner or commissioners, to grant to the purchaser or purchasers, a certificate of purchase, containing a description of the number of acres purchased, and the price for which the same was sold; duplicates of all which, said commissioner or commissioners, shall forward to the auditor of public accounts, who shall record the same. And the person holding such certificate shall, upon presenting the same to the governor, receive a patent for the land described in the same, signed by the governor, and countersigned by the secretary of state, with the seal of the State annexed thereto. The said commissioners shall have power to pay off such parts of said donation into town lots, as they may think proper; and to sell the same at public sale, in the same manner as is provided in this act for the sale of other lands. No sale shall be made otherwise than for cash. No land shall be sold at private sale, until the same shall have been offered at public sale.

SEC. 8. The treasurer at all times (except the times of public sale) shall keep an office open at some point on the route of said canal at which persons may enter any of the lands included within the said donation, at one dollar and twenty-five cents per acre, in cash, in the same manner in which lands may be entered in any of the land offices of the United States. And at such private sales the treasurer shall grant a certificate of purchase to the purchaser, containing a description of the quantity of land, and the price for which the same was sold; upon presenting which to the governor, the party shall be entitled to receive a patent for the same, as above provided. It shall be the further duty of the treasurer to make entries of sales of land made by him, in book or books, to be kept by him for that purpose, containing a faithful description of the quantity of acres, in each tract sold by him, and the price at which the same was sold, and shall make monthly returns therefor to the auditor of public accounts.

SEC. 9. It shall be the duty of the commissioners (a majority of whom may act in all cases whatever) to draw upon the treasurer in favor of all persons to whom the board may become indebted; and said treasurer shall pay out no money except upon the order of said commissioners, or as in herein expressly provided for; and he shall take receipts therefor. Duplicates of all orders shall be kept by said commissioners, and it shall be the duty of said commissioners, and treasurer, to furnish duplicates of all orders and receipts, and a complete detailed statement of the amount of sales and receipts, the quantity of land sold, the prices for which the same was sold, and of all their proceedings, to each called or regular session of the General Assembly, accompanied with such

plans, remarks and observations, as they may be enabled to make, respecting the further progress and execution of said work.

SEC. 10. Said commissioners may sue and be sued, and defend in the name of 'the board of commissioners of the Illinois and Michigan canal.' And to enable said commissioners to accomplish the object herein contemplated, it shall be lawful for them to enter and take of and use, any lands, waters and streams, necessary for the prosecution of the work intended by this act.

SEC. 11. The canal contemplated by this act, shall have the following dimensions, to wit: At least 40 feet in width at the summit water line, twenty-eight feet wide at the bottom, and of sufficient depth to contain at least four feet of water. And it shall be furnished with such locks, aqueducts and dams, as may be required to insure a safe and convenient navigation for boats *of* at least twenty-
five feet long, thirteen feet six inches wide, and drawing three
52 feet of water. The reasonable expenses incurred by said commissioner-, in carrying the provisions of this act into effect, shall be paid out of the funds arising from the sales of the aforesaid lands.

Approved January 22, 1829."

Under the provisions of the last above act the governor of the State of Illinois, by and with the advice and consent of the senate, and *on*, to wit, the month of March, 1829, appointed Edward Roberts, Gersham Jayne, and Charles Dunn canal commissioners.

XVII.

On September 23, 1829, the canal commissioners appointed under the act of the General Assembly of January 22, 1829, by their agent and representative, Elijah Iles, obtained from the secretary of state of the State of Illinois the certain map of the route of the Illinois and Michigan canal made by J. Post and R. Paul, and at that time said Elijah Iles, for and on behalf of said commissioners, executed to the said secretary of state a receipt for said map; which receipt was and is in the words and figures following:

"VANDALIA, *Sept.* 23, 1829.

Received of the secretary of state, for the use of the com-
53 missioners appointed by the General Assembly at the session of 1828 and 1829 for the purpose of locating and examining the canal route from Lake Michigan to the falls of the Illinois river, the map of the surveyed lands lying on said route and the profile of the survey made by the former commissioners appointed to locate said route.

ELIJAH ILES."

XVIII.

During the years 1823 and 1824 the State of Illinois surveyed and marked through the public lands of the United States the route of the canal connecting the Illinois river with the southern bend of Lake Michigan, but did not return a map thereof to the Treasury Department within three years from March 30, 1822.

XIX.

The State of Illinois did, in the year 1829, return a complete map of the route of the canal connecting the Illinois river with Lake Michigan to the Treasury Department of the United States; which said map was filed in said department in said year, a duly certified copy of which said map, with endorsements thereon, is now on file in the office of the canal commissioners of the State of Illinois, at their office in the city of Lockport, Illinois, and is marked
54 for identification "Exhibit B," and is made by reference a part of this stipulation.

It is agreed that said certified copy marked "Exhibit B" shall be introduced and considered in evidence upon the trial of this case without further identification or proof, and that said certified copy shall be given the same force and effect as would be given the said original map if offered and admitted in evidence.

The State of Illinois commenced the construction of the said canal connecting the Illinois river with Lake Michigan, the name thereof being the Illinois and Michigan canal, in the year A. D. 1837, and completed the same in the year A. D. 1847, upon the route as indicated by said map marked Exhibit "B."

XXI.

The said Illinois and Michigan canal from the date of its completion to the present time has been suitable for navigation, and has been used as and for a canal for the purpose of navigation.

XXII.

It is not the intention of the parties hereto or of either of them to submit this cause or the matters in controversy between said
55 parties for determination under an act of the General Assembly of the State of Illinois entitled "An act to enable parties to avoid delay in the administration of justice," approved June 17, 1887, in force July 1, 1887.

It being the intention of the parties hereto by this stipulation to waive a jury and submit the cause to the court for trial, and that said trial shall be had in the same manner as common-law causes are tried by a court without the intervention of a jury and upon the facts as hereinabove stipulated, together with such further evidence as either party may introduce upon the trial.

(Signed) HENRY MAYO,
Plaintiffs' Attorney.

(Signed) LINCOLN & STEAD,
Defendants' Attorney-.

(Endorsed on the back of which stipulation is the following:)

"11529. Emily E. Ingersoll *vs.* Frank X. Werling. Stipulation. Filed Sept. 28, 1898. Henry Phillips, clerk La Salle Co. circuit court."

The plaintiffs, by their attorney, offered and introduced in evidence the map marked Exhibit "B," referred to in the said stipulation, in the words and figures following, to wit:

56 I, F. M. Ryon, secretary of the canal commissioners, officers of the State of Illinois, and keeper of the records and seal of the canal commissioners aforesaid, do hereby certify that the annexed and foregoing tracing copy of map of the Illinois and Michigan canal, filed under the provisions of the act of Congress approved March 2, 1827, and also of the letter transmitting said map to the General Land Office by the governor of Illinois, under date December 25, 1829, and the certificate of the Commissioner of the General Land Office, under date of November 23, 1882, are true and literal exemplifications of the originals now on file in this office.

Witness my hand and the official seal of the canal commissioners aforesaid this sixteenth day of June, 1898.

[SEAL.] F. M. RYON, *Secretary.*

H. F. (4–207.) T. C.
J. D. S.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *November* 23, 1882.

I, N. C. McFarland, Commissioner of the General Land Office, do hereby certify that the annexed tracing copy of map of the Illinois and Michigan canal, filed under the provisions of the act of
57 Congress approved March 2, 1827, and also, hereto attached, the letter transmitting said map to this office by the governor of Illinois, dated 25 December, 1829, are true and literal exemplifications of the originals now on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[SEAL.] N. C. McFARLAND,
Commissioner of General Land Office.

(2470–500.)

BELLEVILLE, ILLINOIS, 25 *Dec.*, 1829.

SIR: I have the honor herewith to transmit to you a map of the route which has been selected for the canal to connect the waters of Lake Michigan and the Illinois river, with the selection of lands granted to the State which has been made by the canal commissioners of this State, according to law and as nearly agreeable to your instructions as was practicable.

If these selections should be approved by the President, it
58 is hoped that patents will be transmitted as soon as practicable.

Wishing to avoid delay, I have no time to have a copy taken of

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the map herewith sent, and should be very glad if you would send it back after you are done with it.

I have the honor to be,

Very respectfully, sir, y'r mo. ob. s't,

NINIAN EDWARDS.

(Here follows map marked page 59.)

60 It *esd* then and there stipulated and agreed by and between the parties to said cause, by their respective attorneys, that the Illinois & Michigan canal passes through section 18, township 33 north, range three east, of the third principal meridian, in the county of La Salle and State of Illinois.

The plaintiffs, by their attorney, then and there offered and read in evidence Record "D" of the circuit court of La Salle county, at page 25 thereof, in the words and figures following, to wit:

La Salle Circuit Court, November Term, 1839.

SATURDAY, *November 16th*, 1839.

61

BENJAMIN THURSTON	)	No. 20. Claim for Damages to the Southeast Quarter of Section 18, Township 33 North, Range 3 East, of the 3d P. M.
vs.	(	
THE STATE OF ILLINOIS.	)	

The board of assessors, A. R. Dodge and William J. Mix, having filed in the clerk's office of the circuit court of said county a copy of their report in this matter, containing an account in writing of said claim, the manner in which it arises, and the testimony taken by them in relation to the same; containing also an assessment of damages awarded to the said claimant, amounting to four hundred and fifty dollars; also a description of the land to be surrendered by said claimant to the State; and the said report and assessment of damages having been returned and presented to the court, and the same having been examined and considered by the court, and no exceptions being taken or objections made to said report, it is ordered by the court that the board of canal commissioners of the Illinois and Michigan canal be directed to pay to the said claimant, Benjamin Thurston, the said sum of four hundred and fifty dollars for his damages aforesaid as awarded by the said assessors, and that they also pay to the said claimant his legal costs by him expended in the defence of his said claim.

62 To the introduction of which in evidence defendants, by their attorney, objected for the reason that said record does not pertain to section ten, township thirty-three north, range three.

Which objection the court overruled; to which ruling — the court defendants, by their attorney, then and there excepted.

It was then and there stipulated and agreed by and between the parties to said cause, by their respective attorneys, that in case the

court finds the issues herein joined for the plaintiffs that plaintiffs are entitled to damages in the sum of fifty dollars.

Thereupon the plaintiffs rested their case.

And the defendants, in order to maintain the issues upon their part, offered or introduced the following evidence:

Defendants, by their attorney, offered and read in evidence the deposition of Artemus J. Mathewson, taken by agreement of parties November 16, 1898, at Lockport, Illinois, which is in the words and figures following, to wit:

63 The deposition of Artemus J. Mathewson, taken by agreement between the attorneys in the case of Ingersol *vs.* F. X. Werling and others, in the circuit court of the county of La Salle and State of Illinois, viz:

By agreement between Henry Mayo, attorney for said plaintiff-, and Messrs. Lincoln and Stead, attorneys for said defendants, waiving notice for the purpose of taking said deposition, but reserving the right to object to any and all such parts of said testimony as may be incompetent or immaterial, deposition taken on the 16th day of November, A. D. 1898, at the office of the Illinois and Michigan canal, in Lockport, in the county of Will, in the said State of Illinois.

ARTEMUS J. MATHEWSON, being duly sworn upon the part of said defendants and examined in chief by Mr. Lincoln:

Q. State your name, age, and place of residence.

A. My name is Artemus J. Mathewson; am 82 years old; my residence is Lockport, Illinois.

Q. What has been your profession?

A. Civil engineer and surveyor.

Q. How long have you been a resident of the State of Illinois?

A. Since 1837, inclusive. I came here in 1837; has been my home ever since.

Q. Have you resided all the time in Lockport?

A. No, sir.

Q. How many years have you lived in Lockport?

64 A. I can't remember just how many years. While the canal was being constructed I worked for William B. Ogden, of Chicago—perhaps three or four years. The balance of the time my home has been in Lockport.

Q. Do you remember what year the canal was completed?

A. No, sir. I think it was about 1867 or '68.

Q. In what year did you first become connected with the Illinois and Michigan canal, or in what year were you first employed, if you were employed, by the Illinois and Michigan Canal Company?

A. 1837.

Q. In what capacity?

A. As rodman.

Q. Where did you work?

A. We worked in western Indiana, easter- Illinois. The locality was the Calumet river and Sauganosh, down the Desplaines valley and Illinois valley to Marseilles. We were then ordered to return to Chicago, where the canal office at that time was located, and proceeded to the north line of the State, or what is called Fox river. For that season our work was done, so far as I was concerned.

Q. At the time you were first employed the canal office was at Chicago?

A. Yes, sir.

Q. That was in 1837?

A. Yes, sir.

65 Q. How long after that was it that the canal office was removed to this place, Lockport?

A. I can't state exactly.

Q. With the exception of the three or four years that you mention having been employed by Mr. Ogden, of Chicago, have you been since 1837, the most of the time, connected with the Illinois and Michigan Company?

A. I was employed by the State or the officers of the State about twenty-seven years since 1837.

Q. Look at the map that is now shown you, the same marked Exhibit "C," and state whether you ever saw that map before today.

A. Yes, sir.

Q. When did you first see that map?

A. Well, I could not state exactly, but many years ago.

Q. How many years, in your judgment, after you were first employed by the canal company did you first see that map?

(I object to that question.)

A. That I could not state, but it was a long time ago, in the early part of my service.

Q. For the canal company?

A. For the canal company—the State.

Q. Where did you see it?

A. In the canal office, in Lockport.

Q. What do you know about that map?

66 A. Very little except its name.

Q. What is its name?

A. The Post & Paul map; that's the only name I have ever heard for it.

Q. Where has that map been since, do you know, the first time you saw it?

A. I can't say.

Q. How many times have you seen it or had reason to refer to it?

A. I never had any occasion to refer to the map. Others were examining the map at the time I saw it.

Q. Have you any judgment as to about the year you first saw it?

A. Well, I should say in the early forties; I can't state the date.

Q. Do you know whether it has been a part of the records and filed in the canal office ever since?

A. I have never saw it anywhere outside of the canal office, to my recollection.

Q. Could you give any idea as to the number of times you have seen it since the time you first saw it?

A. Perhaps three or four times, half a dozen times; I can't state that.

Q. Where have you seen it?

A. Always in the canal office, as far as I recollect.

Q. Did you have any acquaintance with either Post or Paul?

A. No; never saw them.

67 Q. Did you know them by reputation, either of them?

A. Only through this map. I have heard their names spoken frequently, but never saw them to my knowledge.

Q. You think it was some time in the forties that you first saw this map?

A. Yes, sir.

Q. Do you know whether it was before or after?

A. After what?

Q. The completion of the Illinois and Michigan canal.

A. Must have been before.

Q. Do you think the canal was completed in 1867?

A. I think so.

Q. And it was some time before 1867 that you saw the map?

A. Yes, sir; a long time; that's my recollection.

Q. You do not know of your own knowledge where the trustees got this map, do you?

A. No, sir; I don't know whether it was them that did get it.

Q. Were you in the employment of the canal trustees or the canal commissioners?

A. The canal commissioners.

Q. Did you continue in the employment of the canal trustees after the canal was conveyed to them?

A. I think so.

Q. It is true, is it not, that for a number of years after the completion of the canal the canal was turned over to the trustees of

68 the bondholders, together with all of the property that belonged to the canal?

A. No, sir; before the completion.

Q. Was it turned over in 1848?

A. I can't state.

Q. And they retained possession of the canal and all its properties until the bonded debt was paid off, did they not?

A. That's what I understand.

Q. Now, do you know whether you saw this map before that time?

A. I think I did.

Q. How sure are you about it?

A. Well, its only a thought; I can't say when; it was long since.

Q. You say that you knew it by the name of Post & Paul?

A. Post & Paul map, I think.
Q. You don't know how it got that name, do you?
A. Only by hearsay.
Q. And you don't know anything about the time when the map was made?
A. No, sir.
Q. All of the knowledge that you have concerning this map you have gained since you saw it here in the canal office?
A. Yes, sir.

(The signing of the deposition was waived.)

Recalled.

69 Q. Look at the paper marked "Exhibit D" and state what it is.
A. It is a map of section 10, township 33, range 3 east, of the third principal meridian, La Salle county, Illinois.
Q. When was it made?
A. It was made in the winter after the survey was made.
Q. When was the survey made?
A. '48, I think.
Q. Who made it?
A. I made it with the assistance of others.
Q. Who for?
A. Trustees of the Illinois and Michigan canal.
Q. What was that survey?
A. It was a survey of section 10, connecting river as well as the 90-foot lines.
Q. At what point did you start?
A. That I can't tell.
Q. Did you in that year 1848 make that survey from one end of the canal to the other?
A. Yes, sir.
Q. Did you at that time place any marks or stones or stakes to mark the lines that you then made?
A. Yes, sir; at every point we set a stake.
Q. At every point; what do you mean by every point?
A. At every point, at every corner. At every point where the 90-foot lines crossed the section lines we set a stake, and where we could find a proper stone to set we set it, and we would put smaller stones around the stakes to perpetuate the point.
70 Q. When was that survey completed?
A. Well, I think it was '48. We might possibly have left one or two points that were *slews* so bad that we could not get into them in the summer time, and we would go back in the winter and complete the survey of that point a short distance.
Q. What are these figures that you have marked upon this map?
A. Some of them indicate the length of the line in chains and links. Other figures indicate the acres contained within the 90-foot lines, and also the acres outside of the 90-foot lines.

Q. Do you mean the acres within the 90-foot lines in the different sections?

A. In the different parts of each section.

(I enter an entire objection in so far as this map is concerned and to each question pertaining thereto.)

Q. What are the four lines running in a northeasterly and southwesterly direction across this map intended for to indicate?

A. The outside two lines indicate the outside of the 90-foot strip, or each side of the canal.

Q. And the two inside lines?

A. Indicate the top angles at the cutting stakes—top
71 angle of towpath and top angle at *burn* bank of the canal.

Q. Of the canal?

A. Of the canal.

Q. There is a line running from near the northwest corner of the map in a southeasterly direction across the map. What is that intended to indicate?

A. An old road surveyed many years since—before the canal was built.

Q. Did you, after the completion of this survey of the 90-foot lines on each side of the canal, make a plat or map or plats or maps showing what you had done—a record of your survey?

A. For the trustees?

Q. Yes.

A. Yes, sir.

Q. Was that made in triplicate?

A. No, sir. I think it required three books to hold the maps.

Q. Were the surveys of each section kept separate as is shown on this map?

A. Yes, sir.

Q. Then this map simply shows that part of that survey which crosses section 10, in township 33 north, range 3 east, in La Salle county?

A. Yes, sir.

Q. This map marked Exhibit "B" is your own private property; never belonged to the canal office; is kept by yourself at your home?

72 A. Yes; or in my office here. I had an office here once.

Q. It was never the property of the canal commissioners or the canal trustees?

A. No, sir; I was advised to take good care of this to protect the State and myself.

I, Mary V. Maher, do hereby certify that the above and foregoing is a true and correct copy of the deposition of Artemus J. Mathewson in the case of Ingersol *vs.* F. X. Werling and others, in the circuit court of La Salle county, taken on the 16th day of November, A. D. 1898, at the office of the Illinois and Michigan canal in Lockport, county of Will, State of Illinois.

Taken in shorthand and transcribed.

(Signed) MARY V. MAHER, *Stenographer.*

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73 STATE OF ILLINOIS, } ss:
Will County, }

I, Erastus W. Willard, a notary public in and for the county of Will and State of Illinois, do hereby certify that on the 16th day of November, A. D. 1898, by agreement of Henry Mayo, attorney for the said plaintiff, and Lincoln & Stead, attorneys for said defendants, personally appeared before me at the office of the Illinois and Michigan canal, in Lockport, in the county of Will and State of Illinois, Artemus J. Mathewson, witness to testify on the behalf of the defendant- in a certain cause now pending in the circuit court of the county of La Salle, State of Illinois, wherein one Ingersol is plaintiff and F. X. Werling and others defendants.

And I do hereby further certify that the aforesaid witness was first duly sworn to testify to the truth in relation to the matter in controversy in the cause aforesaid, so far as he should be interrogated, and that the testimony of said witness is reduced to writing, and that the reading of the same to the witness and the subscribing of the witness' name was waived by agreement of the attorneys in said cause.

In testimony whereof I have hereunto set my hand and affixed my notarial seal this 16th day of November, A. D. 1898.

(Signed) ERASTUS W. WILLARD,
[N. P. SEAL.] *Notary Public.*

74 (Upon the back of which deposition is the following filemark:)

"Opened and filed Nov. 21, 98. Henry Phillips, cl'k."

Defendants, by their attorney, offered and introduced in evidence, in connection with the deposition of Artemus J. Mathewson, the plat or map marked Exhibit "D," in the words and figures following, to wit:

(Here follows diagram marked page 75.)

76 Defendants, by their attorney, offered and read in evidence a certified copy of a bill rendered by Justice Post to the canal commissioners of the State of Illinois for services in surveying the route of the canal in the autumn of 1823, together with his receipt therefore, in the words and figures respectively as follows:

77 The Canal Commissioners of the State of Illinois to Justus Post, Dr.

For fifty-four days' services exploring & examining the country between the navigable waters of the Illinois river and Lake Michigan, on the route of the contemplated canal, in the autumn of 1823, at $6..... $324.00

Received, Dec., 1823, of the canal commissioners, payment in full of the above account.

JUSTUS POST.

(NOTE.)—Receipts for the above sum having been before given to F. W. Smith and E. J. West, Esquires, which receipts have not been returned to me.

JUSTUS POST.

We do hereby certify that the above account is just and in conformity with an agreement with the commissioners.

E. J. WEST,
ERASTUS BROWN,
T. W. SMITH,
Commissioners.

To the introduction of which in evidence plaintiffs, by their attorney, objected as incompetent.

Defendants, by their attorney, then and there offered and read in evidence certified copies of such portions of pages 273, 274, 275, and 286 of the Senate Journal of Illinois for the year- 1836 and
78 1837 as pertains to the record of the committee on canal and canal lands, upon a bill for the relief of Rene Paul and others, in the words and figures respectively as follows:

(273.) MONDAY, *January* 23, 1837.

Senate met pursuant to adjournment.

* * * * * * *

Mr. Thomas, from the committee on canal and canal lands, to which was referred the bill for "An act for the relief of Rene Paul and others," reported the following state of facts in relation to the subject-matter of the bill: * * *

"Five persons were appointed by name a board of commissioners to consider, devise, and adopt such measures as shall or may be requisite to effect the communication by canal and locks between the navigable waters of the Illinois river and Lake Michigan, who were authorized to employ an engineer and such other persons as might be necessary to fulfill and discharge the duties imposed upon them.

"They were also authorized to cause that part of the terri-
79 tory of the State which may lie upon or contiguous to the probable courses and ranges of said canal to be explored and examined for the purpose of fixing and determining the most eligible and proper route for the same; and to cause all necessary surveys and levels to be taken, and accurate maps filed, and books and drafts thereof to be made.

"They were also required to make a report to the next session of the General Assembly, or to an extra session, provided the governor should commence the same under the powers here granted.

"The board employed Justus Post and Rena Paul as engineers, who made an experimental survey and estimate of costs, &c.

"Post was paid for his services; Paul was not. And the question is now presented—Shall he be paid? The fact that he was employed and devoted his time to the service of the State appears

from the report of the canal commissioners made to the General Assembly in 1825.

"The time of his employment has been proven to be 120 days. The amount claimed is four dollars per day. To the committee the question is plain that the claim ought to be allowed. A want of power on the part of the board of commissioners to employ more than one engineer has been suggested as a reason why the
80 State should not be charged with this claim. It will appear obvious to any one who will examine the subject that this suggestion is founded upon a misconception of the subject. The commissioners were expressly authorized and required to cause examinations, surveys, and levels to be made of the line of the canals. How could they perform this duty without employing engineers? A grant of power and a requisition to do an act of this kind necessarily included a grant of power to use all the means necessary to the performance of that act. If nothing has been said in any part of the act about the employment of an engineer, the requisition upon the commissioners to cause duties to be done requiring the services of an engineer would have been amply sufficient to justify the employment of such a person; but without relying upon these grounds, the committee are of the opinion that the claim ought to be allowed upon another ground. The two engineers did not act together. One of them commenced operations at Chicago, the other on the rapids of the Illinois. The two were enabled to perform the duties required of them in one-half the time which would have been consumed by one, and thus no possible loss or injury could result to the State by their employment. If but one engineer had been employed, his compensation would have amounted to the same which two would have been entitled to. The only difference therefore to the State between the employment of one or two
81 engineers consists in the fact that the work is done in less time and two persons are paid with the same amount of money which would have been required to pay one. In every respect therefore in which the committee can view the subject the claim ought to be allowed and paid.

"In regard to the claims provided for in the second section of the bill, the committee have not been furnished with evidence in the support of any such claim. The committee therefore propose that the said section ought to be stricken out; but the committee do not decide against the right and justice of the claims mentioned in the section. No one of the persons intended to be provided for have been before the committee, and it is not intended by this report to prejudice their rights or in any manner to stop them from presenting their claims hereafter and having them investigated and paid, if found correct.

"The committee propose to amend the bill by striking out the second section."

Which was read and, on motion by Mr. Thomas, laid on the table. The question was then put upon the amendment proposed by the committee and decided in the affirmative. Ordered that the bill be engrossed for a third reading, as amended.

* * * * * * *

(Page 286.)

The engrossed bill entitled "An act for the relief of Rene Paul and others" was read a third time and passed.

82 On motion of Mr. Hamlin, the title was amended by striking out the words "and others."

Ordered that the title of said bill be as amended, and that the secretary inform the house of representatives thereof and ask their concurrence in the passage of said bill.

* * * * * * *

(Objected to by plaintiffs' attorney.)

Defendants, by their attorney, then and there offered and read in evidence an act of the General Assembly of the State of Illinois entitled "An act in relief of Rene Paul and others, approved March 4, 1837," found in the Laws of 1836–'7, at page 190 thereof, in the words and figures following, to wit:

In force 4th March, 1837.

An act for the relief of Rena Paul and others.

SEC. 1. Be it enacted by the people of the State — Illinois, represented in the Gen-

Duty of auditor.

83 eral Assembly, That the auditor of public accounts is hereby directed to issue his warrant on the treasurer of the State, to be paid

Reni Paul, $480.

from the canal fund in favor of Rene Paul for the sum of four hundred and eighty dollars, being the sum of four dollars per day to be paid to him, for the time actually employed in the service of the State, under its authority, as engineer in surveying and delineating the canal route from Lake Michigan to the Illinois river, in the years 1823 and 1824.

John Waddel, $45.

SEC. 2. There shall be paid to John Waddel the sum of $45, for a boat furnished, and $40, for work and labor done for the canal commis-

M. Thompson, E. Thompson, A. Waddel, & J. Watson, $24 each.

sioners, in 1823 and 1824; also to Willis Thompson, Elijah Thompson, Andrew Waddel, and J. Watson, the sum of twenty-four dollars each,

L. Bailey, $56.

and to Lewis Bailey the sum of fifty-six dollars for services rendered the said canal commissioners, which shall be in full for all

84 services rendered, to be paid out of the canal funds, as provided in the first section of this act.

Approved 4th March, 1837.

Objected to by plaintiffs' attorney.

Defendants, by their attorney, offered and read in evidence a certified copy of such portions of pages 10, 14, and 26 of the House Journal of the State of Illinois of the year 1824 and 1825 as pertains to a message by Gov. Coles to the house and the action of the

house of representatives thereon in the words and figures following, respectively:

"Mr. Webb, from the joint committee appointed to wait on the governor, made the following report, to wit:

"Mr. Speaker, the joint committee appointed to wait on the governor of the State and inform him of the organization of the General Assembly have the honor of reporting the performance of that duty and of stating that the governor will this day, at half past 12 o'clock, make a communication in writing to each branch of the General Assembly."

85 A message from the governor by Mr. Birkbeck, secretary of state:

"Mr. Speaker, I am directed by the governor to deliver to the speaker of this house a message in writing."

The governor's message was then taken up and read as follows, to wit:

Fellow-citizens of the senate and of the house of representatives: I have convened you at an earlier period than that fixed by law to obviate a defeet in the act entitled "An act providing for the election of electors of President and Vice-President of the United States."

By this act it is provi—

Page 14.

and more defective and inefficient, and kidnapping has now become a regular trade, which is carried on to a vast extend to the country bordering on the lower Mississippi, up the Red river, and to the West Indies. To put an immediate and effectual stop to this nefarious traffic is the imperious duty of the legislature. There can come before you no subject with a more direct appeal to
86 the generous feelings of humanity or with *on* your sense of justice than the exposed and defenceless condition — stronger claims of free persons of color, and it is hoped that penalties more proportionate to the enormity of the crime, and provisions better ad*pa*ted to counteract the facilities of committing it, arising from our peculiar situation, will be enacted.

I also recommended to the last General Assembly the opening of navigable communications between the Great Lakes and the Wabash and Illinois rivers, and to effect these objects that a portion of the revenue should be annually set apart to create and sustain a fund to be exclusively apportioned to internal improvements, and I suggested that humanity, no less than the interest of the State, called for the creation of a penitentiary. As further reflection has confirmed my sentiments regarding each of these measures, I beg leave to renew my former recommendation.

The report which will be made to you by the commissioners appointed by the last legislature to have surveys and estimates made of the expenses of opening a navigable communication between Lake Michigan and the Illinois river will doubtless enable you to understand the subject and judge when and in what manner you

can best execute that great and desirable work. I still cherish the belief that under a judicious system this as well as the other
87 important measure of opening in co-operation with Indiana the navigation between Lake Erie and the Wabash may be accomplished in a much less time than has been supposed. Our revenue is yearly increasing, and although, when the currency recovers its value, it will be proper to reduce the taxes, yet from the usually large amount paid by non-resident proprietors of military bounty land, and the number and value of the salines, the revenue of Illinois will for many years to come be great in proportion to its population.

The following resolutions were adopted:

1st. Resolved, That so much of the governor's message as relates to the replevin laws be referred to the committee on judiciary.

2nd. Resolved, That so much of the governor's message as relates to the State Bank of Illinois be referred to the committee on finance.

3d. Resolved, That so much of the governor's message as relates to the abolition of African slavery, the amendment of the law concerning persons held to service, and the prevention of kidnapping, be referred to a select committee.

4th. Resolved, That so much of the governor's message as relates to the opening of navigable communication between the Great Lakes and the Wabash and Illinois rivers, so much thereof
88 as relates to the establishment of a fund for internal improvements, and so much thereof as relates to the improvement of the navigation of the Wabash river, together with the documents relating to the latter subject, be referred to the committee on internal improvements.

Defendants, by their attorney, offered and introduced in evidence a certified copy of such parts of pages 32, 36, 37, and 51 of the House Journal of the State of Illinois for the years 1824 and 1825 as pertains to a memorial to the Congress of the United States in reference to the canal, together with the action of the house thereon, in the words and figures following respectively, to wit:

(Objected to by plaintiffs' attorney as incompetent.)

On page 32 of said Journal, under date of November 20, 1824, in the words and figures following, to wit:

"On leave being given, Mr. Russell presented a memorial to the Congress of the United States soliciting a grant of land of the depth of one section on each side of the canal proposed to be opened between Lake Michigan and the Illinois river; which was read, and,

On motion of Mr. Hansen, laid on the table.

On motion of Mr. Kane, the house agreed to reconsider the vote."

89 Upon page 36 of said journal, under date of November 22, 1824, the following:

"On motion of Mr. Moore,

The memorial presented by Mr. Russell to the Congress of the United States, soliciting a grant of land of the depth of one section

on each side of the canal proposed to be opened between Lake Michigan and the Illinois river, was taken and,

On motion of Mr. Hansen,

Referred to a select committee.

Ordered that Messrs. Hansen, M'Gahey, and Norton be that committee."

Upon page 37, under date of November 23, 1824, the following:

"Mr. Hansen, from the select committee to which was referred the memorial to the Congress of the United States soliciting a grant of land one section in depth on each side of the canal proposed to be opened between Lake Michigan and the Illinois river, reported the said memorial with the following amendments, to wit: In the 14th line, strike out the words *proceeded to appoint*, and insert *appointed;* in the 26th, 27th, and 28th lines, strike out the words *that it may be done at a very moderate expense*, and insert *with the assistance of*
90 Congress may be carried into effect.

The report was read and concurred in.

The memorial, as amended, was then adopted by the house.

Ordered that the clerk inform the senate thereof, and ask their concurrence therein."

Upon page 51, under date of November 27, 1824, the following:

"A message from the senate, by Mr. West, their secretary:

"Mr. Speaker, I am directed by the senate to inform the house of representatives that they have concurred in the report of the joint committee appointed to address Gen. La Fayette; that they have also concurred in the memorial adopted by the house of representatives soliciting the Congress of the United States for a grant of land of one section in depth on each side of the canal proposed to be opened between Lake Michigan and the Illinois river."

Defendants, by their attorney, then and there offered and read in evidence a certified copy of pages 227, 229, 237, 259 of the House Journal of the State of Illinois for the years 1824 and 1825, or so much thereof as pertains to the report of the canal commis-
91 sioners and the action of the house of representatives taken thereon, in the words and figures following, to wit:

Upon page 227, under date of January 8, 1825, the following:

"On motion of Mr. Hamilton,

The report of the canal commissioners *were* taken up and referred to the committee on internal improvements."

Upon page 229, under date of January 10, 1825, the following:

"Mr. Hamilton, from the same committee to which was referred the report of the canal commissioners and accompanying documents, reported a bill entitled 'An act to incorporate the Illinois and Michigan Canal Company,' which *were* read the first time; and

On motion of Mr. Hamilton,

Read the second time by its title.

On the further motion of Mr. Hamilton,

Ordered that said bill be referred to a committee of the whole house for today."

Upon page 237 thereof, under date of January 10, the following:

"On motion of Mr. Hamilton,

92 Resolved by the house of representatives (the senate concurring herein), That the executive be, and he is hereby, authorized and required to forward to the President of the United States a copy of the canal commissioners' report, with maps thereto annexed, and also to forward to our members in Congress a copy of said report."

Upon page 259 thereof, under date of January 12, 1825, the following:

"A message from the senate, by Mr. West, their secretary:

"Mr. Speaker, the senate have concurred in the adoption of the resolution from the house of representatives authorizing the governor to employ a competent person to examine and investigate the branch bank at Shawneetown, as amended by them, in which they ask the concurrence of the house of representatives. They have concurred with the house of representatives in the adoption of the resolution authorizing and requiring the executive to forward to the President of the United States a copy of the canal commissioners' report, with the maps thereto annexed, and to forward to our members in Congress copies of said report."

Defendants, by their attorney, then and there offered and read in evidence certified copies of pages 40, 41, and 42 of the Senate

93 Journal of the State of Illinois for the year 1826, or so much thereof as pertains to a communication from the president of the canal company and the acts of the senate taken thereon, in the words and figures respectively as follows:

Senate Journal, 1826–'27.

FRIDAY, *January* 13, 1826.

* * * * * * *

Mr. Speaker laid before the senate a communication from the president and directors of the Illinois and Michigan Canal Company, which was read, and on motion of Mr. Lemen it was ordered that said communication be spread on the Journal, which is in the words and figures, viz:

To the senate and house of representatives of the State of Illinois:

In compliance with a provision of the charter which requires the company to make to every session of the General Assembly a report of the expense incurred, the undersigned president and directors of the Illinois and Michigan Canal Company report that they have expended the sum of $98 in printing and distributing a number of

94 the pamphlets containing the reports of the canal commissioners and engineers, and the law incorporating the company, together with a map delineating the route of the proposed canal. The undersigned think proper to add in explanation of their conduct, and for the information and consideration of the General Assembly, that immediately on the passage of the law incorporating the company the directors organized their board and

caused to be printed the pamphlets above referred to, and distributed them extensively, accompanied in many cases by letters from the directors to persons who it was thought might be induced to subscribe to the company or in any manner be inclined to promote *subscribe to the company or in any manner be inclined to promote* the great object for which it had been incorporated. It was not deemed expedient to go to the expense and trouble of opening books for subscription to the company until the necessary information contained in the pamphlets should be furnished, and the opinion and disposition of capitalists ascertained. From the information which has been received it is not believed that the stock could have been disposed of for several years to come unless Congress will make a donation of land, but with a reasonable grant the directors are of opinion the stock would be subscribed and the canal promptly executed by the capitalists of the Atlantic States.

95 Presuming that the object the General Assembly had in view in incorporating a company was to have the work immediately undertaken, and not believing that this can be done without a donation of land, which it is thought Congress would be more willing to make to the State than to the company, and believing also that the charter is defective in many respects, the undersigned president and directors, having no interest other than that common to the community, nor motive for accepting or continuing in their agency than a desire to render a public service, are unwilling to be a barrier to the representatives of the people after having had an opportunity of conferring with their constituents and giving the subject all the consideration which its importance requires from pursuing such course as they may deem best; and therefore the president and directors respectfully return their charter to the hands from *when* they received it in order that the act may be revised; and they hereby give their assent to such alterations, or even abrogation of the charter, as the General Assembly in its wisdom may deem best calculated to promote the interest of the State.

EDWARD COLES.
WM. S. HAMILTON.
JOSEPH DUNCAN.
S. BOND.
J. WARNOCK.

Vandalia, January 12th, 1826.

96 ERASTUS W. WILLARD, a witness of lawful age, produced by the defendants, after being first duly sworn according to law, testified as follows:

Direct examination.

(By Mr. STEAD:)

Q. What is your name?
A. Erastus W. Willard.
Q. Where do you reside?

A. Lockport, Illinois, Will county.

Q. What is your business?

A. I am assistant clerk and collector of the board of commissioners of the Illinois and Michigan canal.

Q. How long have you occupied that position?

A. Since the sixteenth day of February, 1897.

Q. Since you have held that position have you had charge and custody of the records of the canal commissioners' office?

A. I have.

Q. Where are those records kept?

A. In a vault in their main office in Lockport.

Q. You may examine the map shown you and which is referred to as the "Post and Paul" map and marked Exhibit "C" and state whether or not you ever saw that map before.

A. Yes, sir.

Q. When did you first see it, and where?

A. I cannot tell the exact date, but it was in the vault of
97 the records—where the records are kept at the general office of the canal commissioners in Lockport.

Q. You may state whether or not the map shown you is now and has been since your connection with the board of commissioners of the Illinois and Michigan canal a part of the records and files of the office of the canal commissioners.

A. It is and has been.

Q. You may state whether or not you ever made an examination and search among the records and files of the canal commissioners' office at Lockport and also in the office of the secretary of state of the State of Illinois for maps, plats, and reports pertaining to the survey of the Illinois and Michigan canal.

A. I have examined for documents on file among the canal records, letters, bills, and everything of that character from the date that they were first recorded there up to 1860, I think—'58, '59, or '60. I found nothing of the map or report of the first canal commissioners.

Q. Did you make any examination among the records and files of the office of the secretary of state at Springfield?

A. I did.

Q. State whether or not you have been able to find the report of a copy of the report that was made or which purports to have been made by the canal commissioners of the State of Illi-
98 nois to the General Assembly in the month of January, 1825.

A. I could not find it; I could find no trace of it.

Q. Have you been able to find any trace of that report or any memoranda referring to that report other than as contained in the copies of the senate and house journal which have been introduced in evidence in this case?

A. I found letters from Governor Clinton, of New York—that is, I found the original letters referring to that report *to* asking that copies be sent him.

FOLD OUT IS TOO LARGE TO BE FILMED

Mr. MAYO: I object to that and ask to have it stricken out.

Which motion the court sustained; to which ruling of the court defendants, by their attorney, then and there excepted.

Q. Have you found any record of that report or any memorandum in the office of the secretary of state, in Springfield, other than the records and memoranda contained in the senate and house journal, copies of which have been introduced in evidence?

A. No; I found nothing.

Q. You may examine the map, Exhibit "D," and state whether or not a record of that map or a copy of the map appears
99 among the records and filed of the canal commissioners' office at Lockport.

A. Yes, sir; it is among the records there in one of the plat books—recorded in the plat book—plat book No. 3.

(Here follows map marked page 100.)

101 The defendants, by their attorney, offered in evidence said map, marked Exhibit "C," known as the "Post and Paul" map in the words, figures, and characters following, to wit:

Office of the Board of Commissioners of the Illinois and Michigan Canal.

LOCKPORT, ILLINOIS, *December 2nd*, 1898.

STATE OF ILLINOIS, } ss:
Will County, }

I, Howard O. Hilton, secretary of the board of commissioners of the Illinois and Michigan canal, do hereby certify that the annexed tracing copy of map of the Illinois and Michigan canal made by Post and Paul from their survey, in the year 1824, of a route of a canal connecting the Illinois river with the water of Lake Michigan in accordance with the provision of section three (3) of an act to provide for the improvement of the internal navigation of this State, approved February 14th, 1823, is a true and literal ex-
102 emplification of the original, now on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at Lockport, Illinois, on the day and year above written.

HOWARD O. HILYON,

[SEAL.] *Secretary of the Board of Commissioners of the Illinois and Michigan Canal.*

And thereupon the defendants rested their case.

The above and foregoing is all of the evidence offered or introduced by either party upon the trial of said cause.

And thereupon said cause was argued to the court by the respective parties, and the defendants, by their attorney, submitted to the court the following written propositions to be held as law in the decision of the case:

1. That under and by virtue of the act of Congress of March 30, A. D. 1822, the State of Illinois became vested with
Refused. the title and the right to the perpetual use for a canal to a strip of land ninety feet wide on each side of a canal, the route of which should be marked and surveyed by said State through the public lands of the United States, connect-
103 ing the Illinois river with the southern bend of Lake Michigan.

2. That the State of Illinois being so invested with the title to said lands, the survey and marking out of the route of said canal, under and in compliance with said act of Congress, and the construction of said canal by the State, connecting the Illinois river with the southern bend of Lake Michigan, under
Refused. and by virtue of said act and the act of Congress of March 2, A. D. 1827, mentioned in said stipulation, gave precision to the title and attached it to the particular lands within said ninety feet on each side of said canal as constructed by the State.

3. That by reason of said grant to the State of Illinois, provided in said act of Congress of A. D. 1822, and of the marking and survey by the State of Illinois of the route of the canal mentioned in said act, in compliance with said act, and of the construction of said canal by the State by virtue of said act and the
Refused. said act of Congress of March 2, 1827, the State of Illinois became entitled to the perpetual use of and is now the owner of and entitled to the possession of the particular tract of land from which the defendants in this case removed
104 the plaintiff's fence, and the State was the owner and entitled to the possession of said land at the time the said fence was so removed.

4. Although the grant to the State of Illinois by the act of March 30, 1822, then invested the State with the title to ninety feet of land on each side of a canal to be located, surveyed, and constructed by said State through the public lands of the United States, connecting the Illinois river with Lake Michigan, and although the route of said canal was not then designated, and until it
Refused. should be designated the title so granted did not attach to any particular or specific tract or tracts of land, yet the title then and by the said act of Congress passed to the State to the said lands to be afterwards located, and then the route of the canal was afterwards fixed and the canal constructed by the State, the location of the said ninety feet of land on each side of said canal became certain, and the title to said ninety feet, which was previously imperfect, acquired precision and became attached to the land.

5. That upon the passage of the act of Congress of March 30, 1822, the State of Illinois became thereby immediately vested
105 with the title to ninety feet in width of land lying on each side of a canal to be by the State marked, surveyed, and afterwards constructed through the public lands of the United States, connecting the Illinois river with Lake Michigan; but that

such title did not attach to any particular lands until
Refused. the route of said canal was afterwards surveyed and located under the provisions of said act, and until said canal was afterwards constructed by the State, under the provisions of said acts of March 30, 1822, and March 2, 1827; and upon the completion of said canal said title to said State, so granted by the act of March 30, 1822, acquired precision and became attached to the ninety feet in width on each side of said canal as constructed.

6. That the State of Illinois, at the time of the commission of the alleged trespass by the defendants, was and now is and for more than fifty years has been the owner of and entitled to the possession of the land in controversy in this suit, and for all that time the State has held the said lands and still holds the same
Refused. as the public property of said State, in the exercise of its sovereign and constitutional powers, by virtue of and for the uses and purposes mentioned in the acts of Con-
106 gress of the United States of March 30, A. D. 1822, and March 2, A. D. 1827, mentioned and set forth in said stipulation.

7. That the conditions mentioned in said act of Congress of March 30, A. D. 1822, to be performed by the State, viz., "that the State should direct, by law, said canal to be opened and return a complete map thereof to the Treasury Department of the
Refused. United States, within three years from and after the passing of said act, and that said canal should be completed, suitable for navigation, within twelve years after the passing of said act," were and are conditions subsequent, the non-performance of which by the State did not divest it of the title conveyed to it by said grant.

8. That no one can take advantage of the non-performance of a condition subsequent annexed to an estate, or title to an estate granted, except the grantor or his heirs or the successors of the grantor if the grant proceed from an artificial person.
Refused. The same doctrine obtains where the grant upon condition subsequent proceeds from the United States Government, no individual can assail the title it has conveyed, on the ground that the grantee has failed to perform the conditions annexed.

9. That the State of Illinois, being so invested with the
107 title to said ninety feet on each side of said canal, could not be divested of said title by non-performance of said
Refused. conditions, but could only be divested of such title by the United States by affirmative action on its part, viz., either by judicial proceedings to enforce a forfeiture or by legislation.

10. That the said act of Congress of March 2, 1827, is held to be an assisting or enabling act to the said act of A. D.
Refused. 1822, and was intended to assist the State of Illinois in constructing the canal mentioned in the act of 1822 and enable the State to build and pay for the same.

11. That the object and intention of said act of Congress of

March 2, A. D. 1827, was to aid the State of Illinois
Refused. to build and open the canal referred to in the said act of March 30, 1822, and to give to said State further time to construct and complete said canal.

12. That the State of Illinois is now the owner of
Refused. and entitled to the possession of the land in controversy in this suit.

108 13. That no act of the legislature of the State of Illinois was necessary to be passed accepting specifically the grant of land made to the State by the act of Congress of March 30, 1822, but that the act of the legislature of the State of Illi-
Refused. nois of February 14, 1823, mentioned in said stipulation, and the survey and marking of the route of said canal by surveyors employed by the State, as shown by said stipulation, together with the other evidence in the case, constitute in law an acceptance by the State of the grant of lands made by the act of Congress of March 30, A. D. 1822.

14. That under the evidence in this case the State
Refused. of Illinois accepted the grant made by the act of Congress of March 30, 1822.

15. That the State of Illinois accepted the grants of
Refused. land made by both the acts of Congress of March 30, 1822, and of March 2, 1827.

16. That the said act of Congress of March 30, 1822, and the said act of Congress of March 2, 1827, entitled "An
Refused. act to grant a quantity of land to the State of Illinois for the purpose of aiding in opening a canal to con-
109 nect the waters of the Illinois river with those of Lake Michigan," must be taken together as referring to one and the same canal.

17. That the State of Illinois was, at the time of the
Refused. commission of the alleged trespass by the defendants, the owner of the land in controversy and then had the right to the possession of the same.

18. That at the time the defendants removed the fence of the plaintiff from the land in controversy the State of Illinois owned and then had the right to the possession thereof as
Refused. against the plaintiff, and the defendants, then being the agents of said State and acting for said State, had the right to remove said fence, and their act in that regard was not a trespass.

19. That the title to the ninety feet in width on the south side of the Illinois and Michigan canal having vested in the State of Illinois by said act of Congress of March 30, 1822, and having remained in the State of Illinois ever since, the plaintiff's grantors acquired no title to that part of the west half ($\frac{1}{2}$) of the north-
Refused. west quarter ($\frac{1}{4}$) and that part of the west half ($\frac{1}{2}$) of the southeast quarter ($\frac{1}{4}$) of the northwest quarter ($\frac{1}{4}$)
110 of said section ten (10), in township thirty-three (33) north, in range three (3) east, of the third (3rd) principal meridian, which lies within said ninety feet, by the entries of said lands by

Henry M. Warnock and Henry L. Brush in the year A. D. 1835, as mentioned in said stipulation, nor did the plaintiff by mesne conveyances from the said Warnock and the said Brush down to her, as mentioned in said stipulation, acquire any title to or right to the possession of any part of said ninety feet, and the defendants, as agents of and acting for the State of Illinois, had the lawful right to remove the plaintiff's fence therefrom.

20. That the plaintiff's possession to the lands in controversy for more than twenty years, as mentioned in said stipulation, gave to her no other or additional right or title to said lands than she received from her grantors; that as against the State she could acquire no right or title to said lands by reason of her long possession of the same. The statute of limitations does not run against the State, and no prescriptive rights to said lands were or could be acquired by said plaintiff against the State.

Held.

And the court then and there held as law in the decision of the case said proposition numbered 20.

111 But the court then and there refused to hold as law in the decision of the case said written propositions numbered respectively 1 to 19, both inclusive, and each and every thereof, and marked thereon the word "Refused."

To which ruling and decision of the court in refusing to hold as law in the decision of the case said last-mentioned propositions and each and every thereof and marking the same "Refused" the defendants, by their attorney, then and there excepted.

The above and foregoing are all of the written propositions submitted to the court to be held as law in the decision of the case.

Be it remembered that afterwards, to wit, upon the eighth day of December, A. D. 1898 (the same being one of the days of the said October term of said court for the year 1898 aforesaid), the court found the issues herein to be for the plaintiff.

To which ruling of the court in finding the issues herein
112 to be for plaintiff- defendants, by their attorney, then and there excepted.

And the court thereupon assessed plaintiffs' damages upon the said finding at fifty dollars.

To which ruling and decision of the court defendants, by their attorney, then and there excepted.

Thereupon the court entered judgment on the finding for $50.00 and costs.

To which ruling and decision of the court in entering judgment on the finding defendants, by their attorney, then and there excepted.

The above and foregoing bill of exceptions tendered to me by defendants' attorneys this fourth day of January, A. D. 1899.

CHARLES BLANCHARD,
Circuit Judge.

Forasmuch, therefore, as the matters and things above set forth do not fully appear of record in said cause, the defendants, by their attorney, presents this their bill of exceptions herein and prays that the same may be signed and sealed by the court, pursuant to the statute in such case made and provided, which is accordingly done this fourth day of January, A. D. 1899.

113 CHARLES BLANCHARD, [SEAL.]
Judge of the Thirteenth Judicial Circuit of the State of Illinois.

The above and foregoing bill of exceptions filed in the office of the clerk of said circuit court of La Salle county, Illinois, this 4th day of January, A. D. 1899.

HENRY PHILLIPS,
Clerk of the Circuit Court of La Salle County, Illinois.

Horace Hull, official reporter, circuit court of La Salle county, Ottawa, Illinois, 189–.

114 STATE OF ILLINOIS, } ss:
La Salle County, }

I, Henry W. Phillips, clerk of the circuit court in and for the county of La Salle, in the State of Illinois, and keeper of the records and files thereof, do hereby certify that the above and foregoing is a true, full, and complete copy of (1) the process, (2) the pleadings of the parties respectively, (3) the finding of the court, (4) the judgment of the court, (5) all orders in the cause made by the court, (6) the bill of exceptions, and (7) the appeal bond, in a certain cause lately pending in said court, wherein Emily E. Ingersoll *et al.* were plaintiffs and Frank X. Werling *et al.* were defendants.

In witness whereof I have hereunto set my hand and the seal of said court this 4th day of January, A. D. 1899.

HENRY PHILLIPS,
[SEAL.] *Clerk of the Circuit Court of La Salle County, Illinois.*

115 *Assignment of Errors.*

1. The court erred in admitting improper evidence on the part of plaintiffs upon the trial.
2. The court erred in excluding proper evidence offered by and on behalf of the defendants upon the trial.
3. The court erred in refusing to hold the written propositions and each of them submitted by the defendants, and numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, and 19, to be the law in the case.
4. The court erred in finding the issues for the plaintiffs.
5. The court erred in assessing damages for the plaintiffs upon said finding.
6. The court erred in rendering judgment for the plaintiffs.

7. The court erred in overruling the motion to vacate the judgment and for a new trial.

LINCOLN & STEAD,
Attorneys for Appellants.

116 And afterwards, to wit, on the 18th day of February, A. D. 1899, certain proceedings were had and orders entered in words and figures following, viz:

FRANK X. WERLING and EUGENE SMITH, Appellants, *vs.* EMILY E. INGERSOLL and GEORGE INGERSOLL, Appellees.	Appeal from Circuit Court, La Salle County.

Now, on this day, come the parties hereto, and this being one of the days set apart for the call of the docket under the rules of this court, and it appearing to the court that appellant hath filed herein a duly certified transcript of the record and proceedings of the court below, together with printed abstracts thereof, and briefs and arguments of counsel in support of the errors assigned herein, and entered motion to reverse the judgment and remand said cause and for costs, and said motion being taken under advisement for final hearing, and the clerk of this court reporting that said cause is now ready to be taken, and said cause is here submitted for the consideration and judgment of the court:

Therefore it is ordered by the court that this cause be, and the same is hereby, taken under advisement.

117 At a supreme court, begun and held at Springfield, on Tuesday, the third day of October, in the year of our Lord one thousand eight hundred and ninety-nine, within and for the State of Illinois.

Present: James H. Cartwright, chief justice; Alfred M. Craig, justice; Jacob W. Wilkin, justice; Joseph N. Carter, justice; Benjamin D. Magruder, justice; Jesse J. Phillips, justice; Carroll C. Boggs, justice; Edward C. Akin, attorney general; Charles M. Woods, sheriff.

Attest: CHRISTOPHER MAMER, *Clerk.*

Be it remembered, to wit, on the nineteenth day of October, A. D. 1899, the same being one of the days of the term of court aforesaid, the following proceedings were by said court had and entered of record, to wit:

FRANK X. WERLING and EUGENE SMITH, Appellants, *vs.* EMILY E. INGERSOLL and GEORGE INGERSOLL, Appellees.	Appeal from Circuit Court, La Salle County.

And now, on this day, this cause having been argued by counsel, and the court having diligently examined and inspected as well the

record and proceedings aforesaid as the matters and things therein assigned for error, and being now sufficiently advised of and concerning the premises, for that it appears to the court now here that neither in the record and proceedings aforesaid nor in the rendition of the judgment aforesaid is there anything erroneous, vicious, or defective, and that in that record there is no error:

Therefore it is considered by the court that the judgment aforesaid be affirmed in all things and stand in full force and effect, notwithstanding the said matters and things therein assigned for error; and it is further considered by the court that said appellees recover of and from the said appellants their costs by them in this behalf expended, and that they have execution therefor.

118 Docket No. 651.—Agenda 31.—Northern Div.—Feb., '99.

FRANK X. WERLING ET AL.
v.
EMILY E. INGERSOLL ET AL.

Per Curiam:

This is an action of trespass, instituted in the circuit court of La Salle county by Emily E. Ingersoll and George Ingersoll, appellees, against Frank X. Werling and Eugene Smith, appellants, to recover damages for removing the fences and entering the close of appellees.

The declaration consists of one count. It alleges, in substance, that the defendants, (appellants,) with force and arms, on, to wit, the thirteenth day of November, 1897, and on divers other days, broke and entered certain closes of the plaintiffs, (appellees,) situate in the county of La Salle, and then and there removed and destroyed, to wit, one hundred and fifty rods of fence, of the value of $1,000, and other wrongs then and there did against the peace of the people, etc., and to the damage of the plaintiffs of $1,000. To this declaration no formal pleas were filed. By stipulation all questions of pleading are waived, and it is agreed that any and all evidence competent to establish a cause of action or a defense shall be treated in the same manner, and be given the same force and effect, as though all proper pleas had been filed and properly pleaded.

Under the stipulation the issues in this case are limited, and confined to a single question, viz: Is the State of Illinois the owner of a strip of land ninety feet in width along and contiguous to the south margin of the Illinois and Michigan canal, through section 10? If the State is the owner of this ninety-foot strip, it is stipulated and agreed that this suit cannot be maintained. If the State is not the owner of this ninety-foot strip, it is stipulated and agreed that appellants were guilty of a trespass.

A jury was waived and the case was submitted to the court for trial without a jury. The findings of the court below were in favor of the appellees, and judgment was rendered in their favor against appellants. The present appeal is prosecuted from such judgment.

In *City of Chicago v. McGraw*, 75 Ill., 566, this court decided that

the State is not the owner of the strip in question, ninety feet wide. We refer to that case for the reasons given in support of the conclusion so reached. It is unnecessary to repeat those reasons here.

The judgment of the circuit court is affirmed.

Judgment affirmed.

119 And afterwards, to wit, on the 22nd day of November, A. D. 1899, a certain order was filed in said supreme court in the words and figures following, viz:

In the Supreme Court of Illinois.

FRANK X. WERLING and EUGENE Smith, Appellants, *vs.* EMILY E. INGERSOLL and GEORGE Ingersoll, Appellees.	Appeal from Circuit Court, La Salle County.

Order.

Upon motion of H. M. Snapp, Esq., attorney for appellants, and upon filing a petition for a writ of error and an assignment of errors, it is ordered that a writ of error be, and hereby is, allowed to have reviewed in the Supreme Court of the United States the judgment heretofore entered herein, and that the amount of the bond on said writ of error be, and hereby is, fixed at one thousand dollars ($1,000.00).

JAMES H. CARTWRIGHT,
Chief Justice, Supreme Court of Illinois.

120 In the Supreme Court of Illinois.

FRANK X. WERLING and EUGENE Smith *vs.* EMILY E. INGERSOLL and GEORGE Ingersoll.	Appeal from the Circuit Court of La Salle County.

To the Honorable James H. Cartwright, chief justice of the supreme court of Illinois:

Your petitioners, The Canal Commissioners of the State of Illinois, and Frank X. Werling and Eugene Smith, appellants in the above-entitled case, respectfully represent to your honor:

That said canal commissioners have under the statute sole custody and control of the canal lands of the State of Illinois as agents of said State.

That on Nov. 13, 1897, the appellants, Frank X. Werling and Eugene Smith, were duly constituted agents and employees of the State of Illinois, under said canal commissioners, and that on said date said appellants, acting for and on behalf of the State of Illinois, and under and by virtue of the authority and direction of the

canal commissioners, removed certain fences erected by said Ingersolls in section 10, township 33 north, range 3 east, of the third principal meridian, La Salle county, Illinois.

That a judgment in trespass was recovered against said appellants in the circuit court of La Salle county for removing said fences, and affirmed by the supreme court of Illinois.

That the land upon which said fences were erected is
121 claimed by the canal commissioners to be a part of the canal lands of the State of Illinois, and that the State became vested with title thereto by virtue of certain acts of Congress of March 30, 1822, and March 2, 1827.

Your petitioners further represent that the sole question for determination and decision in this case is whether or not the State of Illinois became vested with the title to said lands under the said acts of Congress of 1822 and 1827, and that the supreme court erred in not finding the title to said land to be in the State of Illinois under said acts.

Your petitioners therefore respectfully petition this honorable court to award a writ of error herein, commanding the clerk of this court, under its seal, to transmit the record in said cause to the Supreme Court of the United States, that all errors of this court, if any, may be reviewed and corrected by said Supreme Court of the United States.

The canal commissioners further represent that this writ of error is being prosecuted by them for appellants, in their capacity as agents of the State of Illinois, and therefore petition this honorable court to allow the said writ to issue without bond.

H. M. SNAPP,
Attorney for Petitioners.

122 In the Supreme Court of the State of Illinois, Northern Grand Division.

FRANK X. WERLING and EUGENE SMITH } Appeal from Circuit Court of La Salle Co.
vs.
EMILY E. INGERSOLL and GEORGE INGERSOLL. }

Writ of Error to the Supreme Court of the United States.

Plaintiff in error's assignment of errors to be attached to the record sent by the clerk of this court to the Supreme Court of the United States.

First. The supreme court of the State of Illinois erred in affirming the decision of the circuit court of La Salle county, State of Illinois.

Second. The supreme court of the State of Illinois erred in not finding that the State of Illinois acquired title to and is now the owner of the land in dispute under and by virtue of the acts of Congress of the United States of March 30, 1822, and March 27, 1827, reading as follows:

Act of March 30, 1822.

"1. The State of Illinois, be, and is hereby, authorized to survey, and mark, through the public lands of the United States, the route of the canal connecting the Illinois river with the southern bend of Lake Michigan; and ninety feet of land on each side of said canal shall be forever reserved from any sale to be made by the United States, except in the cases hereinafter provided for, and the use thereof forever shall be and the same is hereby vested in the said State for a canal, and for no other purpose whatever; on
123 condition, however, that if the said State does not survey and direct by law said canal, to be opened, and return a complete map thereof to the Treasury Department, within three years from and after the passage of this act; or if the said canal be not completed, suitable for navigation, within twelve years thereafter; or if said ground shall ever cease to be occupied by, and used for, a canal suitable for navigation; the reservation and grant hereby made shall be void and of none effect; provided always, and it is hereby enacted and declared, that nothing in this act contained, or that shall be done in pursuance thereof, shall be deemed or construed to imply any obligation on the part of the United States to appropriate any money to defray the expenses of surveying or opening said canal: Provided also, and it is hereby further enacted and declared, that the said canal, when completed, shall be, and forever remain, a public highway for the use of the Government of the United States, free from any toll or other charge whatever, for any property of the United States, or persons in their service, passing through the same.

2. Every section of land through which said canal route may pass, shall be and the same is hereby reserved from future sale, until hereafter specially directed by law; and said State is hereby authorized and permitted, without waste, to use any materials on the public lands adjacent to said canal, that may be necessary for its construction."

124 Act of March 2, 1827.

"1. There be, and hereby is, granted to the State of Illinois, for the purpose of aiding the said State in opening a canal to unite the waters of the Illinois river with those of Lake Michigan, a quantity of land equal to one-half of five sections in width, on each side of said canal, and reserving each alternate section to the United States, to be selected by the Commissioner of the Land Office, under the direction of the President of the United States, from one end of the said canal to the other; and the said lands shall be subject to the disposal of the legislature of the said State, for the purpose aforesaid and no other; provided, that the said canal, when completed, shall be and forever remain, a public highway for the use of the Government of the United States, free from any toll, or other charge, whatsoever, for any property of the United States, or persons in their service, passing through the same: Provided, that said canal shall be commenced within five years, and completed in twenty

years, or the State shall be bound to pay to the United States the amount of any lands previously sold, and that the title to purchasers under the State shall be valid.

"2. So soon as the route of the said canal shall be located and agreed on by the said State, it shall be the duty of the governor thereof, or such other persons as may have been, or shall hereafter be, authorized to superintend the construction of said canal, to examine and ascertain the particular sections to which the said State will be entitled, under the provisions of this act, and report the same to the Secretary of the Treasury of the United States.

"3. The said State, under the authority of the legislature thereof, after the selection shall have been so made, shall have power
125 to sell and convey the whole, or any part of the said land, and to give a title in fee-simple therefor, to whomsoever shall purchase the whole or any part thereof."

Third. The supreme court of the State of Illinois misconstrued the intent and effect of the acts of Congress set out in the second assignment of error.

126 And afterwards, to wit, on the 29th day of November, A. D. 1899, a certain bond was filed in said court in the words and figures following, viz:

In the Supreme Court of the United States.

FRANK X. WERLING and EUGENE SMITH *vs.* EMILY E. INGERSOLL and GEORGE Ingersoll.	Writ of Error — the Supreme Court of the State of Illinois.

Know all men by these presents that we, Frank X. Werling and Eugene Smith, as principals, and H. M. Snapp and Henry Alexander, as sureties, are held and firmly bound unto Emily E. Ingersoll and George Ingersoll in the full and just sum of one thousand dollars, to be paid to the said Emily E. Ingersoll and George Ingersoll, their certain attorneys, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 22nd day of November, in the year of our Lord one thousand eight hundred and ninety-nine.

Whereas lately, at a session of the supreme court of the State of Illinois, in a suit pending in said court between Frank X. Werling and Eugene Smith, plaintiffs, and Emily E. Ingersoll and George Ingersoll, defendants, a final judgment was rendered against the said plaintiffs, and the said Frank X. Werling and Eugene Smith, plaintiffs, having obtained from said court a writ of error to reverse
127 the judgment in the aforesaid suit, and a citation directed to said Emily E. Ingersoll and George Ingersoll is about to be issued, citing and admonishing them to be and appear before the Supreme Court of the United States:

Now, the condition of the above obligation is such that if the said Frank X. Werling and Eugene Smith shall prosecute their writ of error to effect and shall answer all damages and costs that may be awarded against them if they fail to make their plea good, then the above obligation to be void; otherwise to remain in full force and virtue.

FRANK X. WERLING.
EUGENE C. SMITH.
H. M. SNAPP.
HENRY ALEXANDER.

STATE OF ILLINOIS, } ss:
La Salle County, }

I, Stephen Arnold, a notary public in and for said county, hereby certify that Frank X. Werling and Eugene C. Smith, personally known to me to be the same persons whose names are signed to the foregoing bond, appeared before me this day in person and acknowledged that they signed said bond freely and voluntarily for the uses and purposes therein set forth.

Ottawa, Ill., November 22, 1899.

STEPHEN ARNOLD,
Notary Public.

[SEAL.]

The above bond is approved by me this 28th day of November, A. D. 1899.

JAMES H. CARTWRIGHT,
Chief Justice Supreme Court, Illinois.

128 STATE OF ILLINOIS, } ss:
Will County, }

I, Charles Dorrance Dibell, a notary public in and for said county, hereby certify that H. M. Snapp and Henry Alexander, personally known to me to be the same persons whose names are signed to the foregoing bond, appeared before me this day in person and acknowledged they they signed said bond freely and voluntarily for the uses and purposes therein set forth.

CHARLES DORRANCE DIBELL,
Notary Public.

Joliet, Illinois, November 27, 1899.

[SEAL.]

129 STATE OF ILLINOIS, } ss:
Will County, }

H. M. Snapp, being first duly sworn, on oath says that he is a resident of Joliet, Will county, Illinois, and is the owner of real estate exceeding in value the sum of fifteen thousand dollars over and above all liabilities and exemptions of any and every kind or character.

H. M. SNAPP.

Subscribed to and sworn to before me this 27th day of November, A. D. 1899.

CHARLES DORRANCE DIBELL,
Notary Public.

[SEAL.]

130 STATE OF ILLINOIS, } ss:
Will County, }

Henry Alexander, being first duly sworn, on oath says that he is a resident of Joliet, Will county, Illinois, and is the owner of real estate exceeding in value the sum of ten thousand (10,000) dollars over and above all liabilities and exceptions of any and every kind or character.

HENRY ALEXANDER.

Subscribed to and sworn to before me this 27th day of November, A. D. 1899.

CHARLES DORRANCE DIBELL,
Notary Public.

Endorsed on cover: File No., 17,586. Illinois supreme court. Term No., 472. Frank X. Werling & Eugene Smith, plaintiffs in error, *vs.* Emily E. Ingersoll and George Ingersoll. Filed December 18th, 1899.